HIGH COURT OF JUSTICE IN IRELAND
(KING'S BENCH DIVISION).

RETURN to an Order of the Honourable The House of Commons, dated 14*th February*, 1902—*for*,

COPY of the Judgments of the Judges of the High Court of Justice in Ireland (King's Bench Division) in the Cases Stated: Owens and Others, Appellants, Tyacke, Respondent, and O'Donnell and Others, Appellants, Molony, Respondent, decided 3rd February, 1902; with copies of the Summonses and Convictions, and of the Orders of the King's Bench Division.

(*Mr. George Wyndham.*)

Ordered, *by* The House of Commons, *to be Printed*, 14*th February*, 1902.

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1902.

CONTENTS.

In the High Court of Justice in Ireland.

KING'S BENCH DIVISION—CROWN SIDE.

MARTIN OWENS, MICHAEL HIGGINS, MICHAEL DELANY, WILLIAM CUNNANE, PETER ROGAN, THOMAS BRETT, AND JOHN C. HAYDEN M.P., - - - - - - - - *Appellants,*

H. D. TYACKE, - - - - - - - - - *Respondent,*

AND

The Act 20 & 21 Vic., c. 43.

In the Matter of a Complaint wherein the King, at the prosecution of H. D. TYACKE, D.I., R.I.C., was - - - - *Complainant,*

AND

MARTIN OWENS, MICHAEL HIGGINS, MICHAEL DELANY, WILLIAM CUNNANE, PETER ROGAN, THOMAS BRETT, AND JOHN C. HAYDEN, M.P., were - - - - - - - - *Defendants.*

JOHN O'DONNELL, M.P., DENIS JOHNSTON, AND PATRICK M'MANAMY, *Appellants,*

HARRY B. MOLONY, - - - - - - - - *Respondent,*

AND

The Act 20 & 21 Vic., c. 43.

In the Matter of a Complaint wherein the King, at the prosecution of HARRY B. MOLONY, D.I., R.I.C., was - - - - *Complainant,*

AND

JASPER TULLY, M.P., JOHN O'DONNELL, M.P., DENIS JOHNSTON, PATRICK M'MANAMY, AND JOHN GILMARTIN, were - - *Defendants.*

BEFORE PALLES, *C.B.*, AND ANDREWS, JOHNSON AND KENNY, *JJ.*

JUDGMENTS

Delivered 3rd February, 1902.

OWENS *v.* TYACKE.

KENNY, *J.*

The questions for consideration that have been discussed before us arise on a "case stated," at the instance of the defendants, by the magistrates sitting at Ballinlough Petty Sessions, County Roscommon, as a Court specially constituted under Sec. 11, Sub-Sec. 6, of the Criminal Law and Procedure (Ireland) Act, 1887.

The summons on which the defendants were charged, the form of which has led to the controversy before us, was as follows :—

"Whereas a complaint has been made to me that you, the defendants, on Sunday the "17th day of November, 1901, at Cloonfad, in the county aforesaid, took part in an unlawful "assembly, to wit, that you the said defendants, together with other persons to the number "of five and more whose names are unknown unlawfully and tumultuously did assemble "together to the disturbance of the public peace and while so assembled did cause terror "and alarm to His Majesty's quiet and peaceable subjects and particularly to John Fahy "and while so unlawfully assembled you did use and utter words intended and calculated to intimidate the said John Fahy and intended and calculated to urge and incite divers "persons to use and exercise intimidation to and towards the said John Fahy on account "of his having done what he had a legal right to do, namely, to hold and occupy or use

"certain lands at Berinagh in said county and also while so unlawfully assembled you did "use and utter words intended and calculated to incite divers persons occupying lands as "tenants for which lands they were legally liable to pay certain rents to enter into a "criminal conspiracy not to discharge their legal obligations and not to pay the rents "legally payable by them in respect of such their tenancies and thereby to injure the "persons who were or might be entitled to receive such rents, This is to command, etc."

The "case" states that the charge contained in that summons was duly heard before this specially constituted Court, and that it was proved on behalf of the complainant that the meeting to which the complaint referred was held under such circumstances as to render it an unlawful assembly. It is further found by the "case" that what is called the "first charge" in the summons, viz., from and including the opening words, "for that on "Sunday the 17th of November 1901," down to and including the words, "and with "intent to intimidate one John Fahy," *was admitted* to be within the jurisdiction of the Court to decide summarily under the said Act, had it stood by itself alone; but it was contended on the part of the defendants that because the said defendants were charged with indictable offences in the remainder of the summons which could not be heard and determined by the Court under the provisions of the Act unless the district in which they were committed was a proclaimed district under the 5th section, the Court was debarred from hearing and determining summarily any part of the complaint. On that contention of the defendants the Court held that what is called the "first charge" on the one hand, and those contained in the remainder of the summons on the other, were separate charges, and that they had jurisdiction to hear and decide the "first charge," but had not jurisdiction to hear and decide the other charges. The case then finds that the Court being of opinion that the said defendants were guilty of unlawful assembly as charged in the said "first charge" gave judgment against them. The following are the words of the conviction, "We find each and every one of the defendants guilty of having "taken part in an unlawful assembly at Cloonfad, in the County of Roscommon, on 17th "November 1901, to wit, that the said defendants, together with other persons to the "number of five or more whose names are unknown unlawfully did assemble together to "the disturbance of the public peace and with intent to intimidate one John Fahy," and the Order having stated that the other charges were held to be separate charges, with reference to which the magistrates had no jurisdiction. then goes on to pass various sentences of imprisonment on the defendants.

The question put to us by the magistrates is whether they were correct in point of law in their determination as aforesaid. In other words, (taking them from the Order) whether the inclusion in the summons of the "other charges" ousts the jurisdiction of the justices on the *whole* complaint. That is the sole question raised by the case, and we have not to consider the nature of the evidence that was given in support of the charge. Had there been any point arising as to its admissibility or sufficiency, I have no doubt the able and astute advisers of the defendants would have taken the necessary steps to obtain the decision of this Court on the subject. It is enough for me to say, as indeed The MacDermot remarked in the course of the argument, it was open to them to have obtained a mandamus requiring the magistrates to state the evidence, but they have not done so. Without therefore wandering outside the four corners of the case, let us see what are the contentions of the parties before us But before doing so I desire to have it noted that in the Court below the defendants, through their counsel, (1), contended that there were separate charges in the summons, and (2), admitted that the charge of unlawful assembly, coupled with the averment of intent to intimidate Fahy, was within the summary jurisdiction of the Court. I refer to that contention and admission below because after the magistrates have been called to state a case on the argument of "separate charges" and after the admission that the intent to intimidate was a matter for consideration in connection with the charge of unlawful assembly, the contention of the defendants at the *Bar* is now based on the argument that the charge in the summons is all one compound charge, incapable of being disintegrated for the purpose of giving jurisdiction, and that the allegation of intent to intimidate Fahy could not form part of the charge of unlawful assembly. I shall not stop to consider how far this departure from the case made in the Court below ought to affect our view of the question submitted to us, inasmuch as the Crown purport to have a complete answer to the defendants' arguments in their present form The Solicitor-General contends that if the summons is to be regarded as containing separate charges, then the case of ex-parte Conyheare (Judgments of the Superior Courts, Ireland, p. 327) is conclusive as establishing that an entry of "No Rule" on one of two charges in a summons does not affect the validity of a conviction on the other; while if the summons is to be treated as containing only one charge, the gravamen of that charge, the head and front of the offending, is "unlawful assembly," and what are referred to as separate charges are but *reasons* for the allegation of "unlawful assembly" and expansions of the intent attributed to those charged with being concerned in it.

Having now given an epitome of the proceedings and contentions in the case, I proceed to the consideration of the question of jurisdiction raised by the latter. To do so it will be necessary to refer to some of the provisions of the Criminal Law and Procedure (Ireland) Act, 1887, and to see what are the ingredients that at law constitute an unlawful assembly.

Sec. 2 of the Act provides for the trial before a Court of Summary Jurisdiction, composed of two Resident Magistrates, of the offences mentioned in sub-sections 1, 2, 3 and 4. The offences mentioned in sub-sections 1, 2, 3 (b) and (c), and 4, include certain cases of criminal conspiracy, intimidation, taking forcible possession, and resistance to ministers of the law, and are triable summarily only when committed within a district proclaimed in pursuance of the 5th section of the Act. Sub-section 3 (a) of Section 2 provides that "any person who shall take part in "any riot or unlawful assembly" *anywhere in Ireland* may be prosecuted before the Court thus specially constituted These are the only offences determinable summarily by this Court when the district is not a proclaimed one. The district in which the offence or offences mentioned in the summons in this case are alleged to have been committed is not a proclaimed one, and, therefore, the jurisdiction of the Court was strictly limited to charges of riot and unlawful assembly. The 11th section was strongly relied on by Mr. O'Shaughnessy. After providing a penalty, on conviction for any of the offences I have mentioned, of not exceeding six months' imprisonment, it enacts that on every proceeding before the Court for an offence under the Act the evidence shall be taken as depositions in writing, in the same manner as if the offence were an indictable one, and that such depositions shall be admissible in evidence on any appeal. I take it that means that the judgment is to be pronounced on the whole of the evidence as so taken down, and not on any detached or segregated part of it. The argument founded on the section was not, I think, pushed beyond this. The Court being thus constituted with jurisdiction to try summarily a case of riot or of unlawful assembly, and no other offence, the charge set forth in the summons that I have already read was formulated against the defendants Reading that charge as set forth in the summons and in the Magistrates' Book, it is impossible not to see that almost in every line it invites criticism. I could very well have understood the draftsman, I will not call him a pleader, prefacing each of what are called the separate charges with the words "and with intent," instead of setting them forth in a shape that admits of the contention that they are meant to refer to distinct and independent offences. Such a form would have been consistent with the legal notion that he may have entertained, that the gist of an unlawful assembly consisted in its intent, and that he was justified in putting on the face of his summons as many criminal intents as he thought he could prove. At the same time it is hard to conceive how even a comparatively ignorant draftsman, with the knowledge which he must have had that the district was not a proclaimed one. could for a moment have intended to aver that those charges were triable as separate, distinct, and independent offences. His intention, however, is not for us to consider, but the work of his hand, and here let me express my extreme surprise that, when the defendants through their counsel, properly raised this very controversial point below, the Court was not asked to exercise the wide discretionary power of amendment given by the 40 and 41 Vic., ch. 56, sec. 76, and to, if necessary, adjourn the hearing of the case to some future day pursuant to the 39th sec of the Petty Sessions Act. No such application appears to have been made, the Crown apparently being satisfied with the frame of the charge, and we have now to determine whether the conviction on it can be sustained. Its form may be thus epitomized. It charges in its opening words that "the defendants unlawfully took part in an unlawful assembly," and in the copy of the Court Order Book the entire charge has a distinctive heading, *in red ink* in my copy, of "unlawful assembly." This heading to the charge would seem to indicate that "unlawful assembly" alone was the subject of the charge which is there set forth at its full length as given in the case stated. The prefatory words I have referred to are followed by the words "to wit," and it is there alleged that the defendants "unlawfully "assembled together to the disturbance of the public peace and with intent to intimidate "John Fahy." This is followed by an allegation of a further intent, and then comes the averment that "while so unlawfully assembled" the defendants used language intended and calculated to intimidate and to incite to intimidation and to criminal conspiracy. Now before I express an opinion whether this charge is in substance a single charge of unlawful assembly, or is composed of that charge and of others that are severable from it, as was contended below by the defendants, and as was found by the magistrates, let me say this, that in my opinion we are not to construe this charge with anything like the strictness applicable to indictments (*a*.) The spirit and language of the Petty Sessions Act are absolutely opposed to such a course. The 36th, 37th and 38th sections of that Act indicate the amount of laxity that without nullifying a prosecution may be observed in the "complaint and proceed- "ings thereon"; while the 39th section provides that no objection shall be taken or allowed in any proceedings to any information complaint summons warrant or other form of procedure under the Petty Sessions Act for any alleged defect therein in substance or in form, or for any variance between the complaint or summons and the evidence adduced by the complainant or prosecutor in summary proceedings. If it appears to the justices that by any such variance or defect a defendant has been deceived or misled, the hearing of the case may be adjourned to some future day. From these sections it is clear to my mind that, in the statement of a charge before a Court of summary jurisdiction under the Petty Sessions Act, a technical construction is not to be given to it, so long as by reasonable intendment and interpretation the substantial charge which the defendant has to answer is evolved or disclosed. The sections I have mentioned do not contemplate any amendment of the complaint or summons, but by the County Officers

(*a*.) R. *v.* Connors. (Judgments of Superior Courts Ireland p. 163).

R. *v.* Latchford (*ib.* p. 283).

and Courts Act of 1877, sec. 76, power is given to the justices to make any amendment in any summons or charge which shall appear to be requisite for the purpose of making the conviction or order conformable with same, or of raising the real question at issue and deciding the case as justice may require. Let me now apply what I conceive to be the principle of these statutes to the case before us, and see what is the real question at issue, and whether the charge is anything more in substance than a single charge of unlawful assembly. The MacDermot contends that the charge is all one compound charge, in which is comprised averments of several distinct offences—none of which are cognizable by this specially constituted Court. But are these averments to be so regarded, or are they merely allegations of overt acts of the defendants' intent, which need not have been stated in the charge, but which certainly had the merit of giving the defendants complete notice of the character of the case which the Crown proposed to prove An unlawful assembly is defined in Stephen's Digest of the Criminal Law, page 55 (5th ed), as an assembly of three or more persons with intent to commit a crime by open force, or with intent to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly, reasonable grounds to apprehend a breach of the peace in consequence of it. That definition is founded on 1 Hawkins, P.C., ch. 28, sec. 9, Redford *v.* Birley, 3, Starkie, N.P., 107; R. *v.* Vincent, 9, C. & P. 91; and is adopted in the last edition of Archbold's Pl. and Ev., p: 1043. The object of the meeting may be a perfectly lawful one, and in its inception it may be unobjectionable, but it is possible for it to become unlawful at any moment. Its character might be changed by the acts of those assembled, as, for instance, by a sudden display of force and organisation and the use of inflammatory language. But are the allegations of "open force" and "danger to the public peace" necessary ingredients of the offences I find an extract from the charge of the late Mr. Justice Fitzgerald, to the County Dublin Grand Jury in February, 1868, at page 105 of Mr. Molloy's work, in which he states the law relating to unlawful assembly as follows:— "An assembly of persons is unlawful at Common Law, when three or more persons "meet together to carry into effect some illegal purpose, *or* if they meet in such "numbers, and under such circumstances, as to endanger the public peace or cause "alarm and apprehension to His Majesty's subjects" That description of what constitutes an unlawful assembly, if correctly reported, and accurate in point of law, shows that the definitions in Stephen and Archbold which I have already mentioned are by no means exhaustive, and that an assembly may be unlawful simply by reason of its object or intent. This was affirmed by the Exchequer Division of this Court in the case of R. *v.* Burke (Judgments of the Superior Courts, 189) where my Lord Chief Baron in giving the judgment of the Court, says, "It has been argued that unlawful assembly "in this enactment," that is in Sec. 2 of the Act of 1887, "is limited to an assembly which "is unlawful by reason of the circumstances of terror or apprehended violence "under which it takes place; the unlawful assembly which exists in cases of "riot and which is usually a step towards a riot. I am of opinion that it is impos- "sible so to limit the meaning of those words. Were there nothing in the Act material to "the construction except the second section there would be great difficulty to limit the "words, merely because they immediately follow and are used in connection with riot." The Chief Baron then refers to the 7th section as closely bearing on the question, and he continues, "The meeting by this section described as an 'unlawful assembly' is unlawful, "not by reason of any circumstances of terror or apprehended danger which might attend "it, but by reason of its *intent*—because it is a meeting of an unlawful association. The "same expression in Sec. 2 must, therefore, be so read as to be *capable of including* "assemblies unlawful under Sec. 7, and therefore assemblies unlawful merely by reason of "the *intent* with which they are held." I venture to say that I concur in every word of my Lord Chief Baron's judgment. It establishes what I have already said, that the definitions in Stephen and Archbold, adequate as they may have been in the particular cases which supplied the definitions, are not exhaustive, and that a meeting for a common purpose will be an unlawful assembly if its intent, its purpose, is unlawful. Indeed I need not labour this point at greater length, for counsel have not only admitted it but have cited passages from Gabbett on Criminal Law, p. 104, to show that this wider definition is the true one. The case of R. *v.* Burke seems to me to also establish another point that I would have regarded as clear, namely, that the unlawful intent which would constitute an unlawful assembly within sec. 2 of the Act of 1887 may be shown by proof of an intent to commit *any* offence, including any of the offences of criminal conspiracy, intimidation, taking forcible possession and obstructing officers of the law, set forth in Sub-Secs. 1, 2, 3 (b), (c), and 4 of Sec. 2. If, according to R *v.* Burke, an assembly unlawful under Sec. 7 is unlawful under Sec. 3 (a), and an assembly to maliciously injure a man by ploughing up his grass land is also unlawful under the same sub-sec, (both by reason of the intent) I am unable to find anything in the Act, or indeed, apart from the Act, any rational ground for distinguishing between assemblies unlawful because of the intent to commit some of the offences in these other Sub-secs, and assemblies unlawful because of the intent to commit other offences not mentioned in them.

Now applying these observations to the present case, I entertain no doubt that if the charges are severable, as the magistrates considered, there is in point of legal form a most accurate charge of unlawful assembly down to and including the words "with intent to "intimidate John Fahy." The unlawful assembly and its unlawful intent are both

sufficiently alleged. The conviction purports to be on this charge alone, and as I have already shown the case finds that defendants admitted that this charge was within the magistrates' jurisdiction. As to what the magistrates call the "separate charges" their ruling is that they have no jurisdiction to deal with them, and in my opinion R. *v.* Conyheare is an authority for thus dealing with separate and distinct charges, and I rather think that defendants' counsel so admitted.

The case was however strongly pressed from the point of view of the charge heing a compound charge made up of several distinct offences, and it was contended that the magistrates could not disintegrate it, and say, as to part we have jurisdiction, and as to part we have not. Now I don't at all take the view that the magistrates were right in regarding the charge as severable, in the sense of containing several distinct charges, nor can I agree that the charge was a compound one. If an unlawful intent be a necessary ingredient of an unlawful assembly, does the latter become less unlawful, or is its unlawfulness in any way affected, hy the circumstance that it had for its object more than one unlawful purpose. And if it be necessary to *state* an unlawful intent in the charge, how can the latter he affected if more than one unlawful intent be set forth on the face of it. I confess that on this point I cannot see the applicability of the case of *Re* Thompson, 6, H. & N., 193. If, therefore, more than one unlawful intent may he stated, does the charge in the present case in substance go beyond that. No douht the subsequent part of it does set forth the commission of offences in an independent and distinct form, but everyone of them is prefaced with the words "while so assembled" and the general charge at the commencement of the summons is one of "unlawful assembly," which governs the whole of the matter that follows. The intent has to he proved hy some overt act, and it seems to me that those averments in the charge must either he taken as allegations of *overt acts* in proof of unlawful intent, or in themselves additional unlawful *intents*. If they be averments of overt acts they are mere statements of evidence, and though improperly introduced they may in my opinion be regarded as not constituting any part of the charge, and as surplusage. (R. *v.* Jones, 2 B. & Ad., 611). If they he regarded as statements of additional *intents* I think their insertion is justified.

This hrings me to the question of amendment. As I have already said the Petty Sessions Act does not contemplate actual amendment of a charge, hut it goes further for it actually forbids the taking by the defendants, or the allowance, of any *objection* to any complaint for any alleged defect therein in substance or in form, or for any variance. There can be no douht that this section does not prevent an objection grounded on want of jurisdiction, though it does apply to defects which are not mere matter of form hut even involve matter that may be calculated to deceive and mislead the defendant (R. *v.* Connors, Judgments of the Superior Courts, Ireland, 163; R. *v.* Latchford, ib. 282). The effect of the section is in my opinion to enable the Magistrates to treat a summons which is defective for any reason save want of jurisdiction, as if it were properly framed, and to enter their order, if not the charge on which the order is based, in the Order Book, by phraseology that will in substance disclose the particular offence. But in addition to this prohibition against objections to imperfect charges, there is the power, both to the Magistrates and to this Court, given hy the County Officers and Courts Act, to make any amendment in a summons or charge necessary for the purpose of making the order conformable with it, and of raising the real question in issue and deciding as justice shall require These two Acts relate to the summons or charge, and if the Magistrates, instead of treating the charge in the summons as a divisible one, had dealt with it as all one charge of unlawful assembly, and had turned what they call separate charges into mere statements of intent, or deemed them to he so converted, they would in my opinion have been within their rights, and a conviction for unlawful assembly with these intents stated on it could not he disturbed. I see no necessity in this case to exercise the power we possess of amending either the charge or the conviction. Both are expressly and in set terms framed as for unlawful assemhly. The case finds that it was admitted that the charge, down to the words "with intent to intimidate John Fahy" was within the Magistrates' jurisdiction, and if they chose to regard the other matters either as separate charges, or as distinct offences in a compound charge, they had in my opinion power to strike them out, or make their order on the assumption that they were struck out. As I have already said I think they were wrong in treating them as separate charges, instead of either as statements of intent, or of overt acts of intent. The MacDermot argues that if the district were proclaimed to-morrow under the provisions of the Act of 1887 the defendants could be tried summarily in respect of these separate charges. I think they could, if they were committed while the district was proclaimed, but the same observation applies to any case of unlawful assembly when the unlawful purpose or intent is one which has to he gathered from certain overt acts at the meeting which in themselves might constitute a criminal offence on the part of certain of the individuals at the meeting. The MacDermot admits, as indeed he could not help admitting, that everything that occurred at the meeting could he given in evidence on the charge of unlawful assembly. In many cases some of the very things so occurring might subject the parties taking part in them to prosecutions for their individual acts, but no case has been cited, and I know of none, to show that because of that individual illegality, the same parties could not also be made amenable for taking part in the assemhly the unlawfulness of which may have been largely deduced from these very acts.

There is one other argument that deserves notice. It was not developed in the opening of the case, or if it was intended to be then relied on, I for one did not appreciate its point until Mr. O'Shaughnessy's reply. Indeed, when it was first mentioned I thought it assumed the form of a complaint that, as the Magistrates had heard the charge—that is the whole charge—the evidence on what are called the separate charges might have influenced them in measuring the sentences imposed on the defendants. Such a contention scarcely requires an answer, if I am right in the conclusion at which I have arrived as to these charges being in reality only intents or overt acts of intents The character of the overt act of each individual would unquestionably affect the measure of the sentence. It could not be contended that an identical sentence must be meted out to all parties convicted of unlawful assembly. A distinction may for instance have to be drawn between the speakers at a meeting and the men who merely applaud. But Mr O'Shaughnessy's point is one relating to the jurisdiction, and it is this Under the 11th section of the Act of 1887 the evidence given on any charge under the Act has to be taken down in writing, and upon that evidence the Justices have to say guilty or not guilty It is contended that the whole charge contained in the summons and as entered in the Court Book was, as the case finds, "duly heard," and evidence taken on it, and consequently that the Magistrates entered on the hearing of those separate charges which they say they had no jurisdiction to hear, and took evidence relating to them, which evidence forms part of that on which the conviction was based. Therefore it is said that this order cannot be allowed to stand, because it may be that it is based on evidence taken at this unauthorised inquiry, which might be inadmissible on the charge of unlawful assembly. It seems to me to lie at the root of this contention that these separate charges are to be regarded as allegations of distinct offences. If my conclusion is right as to their being merely intents, or evidence of intents, I cannot find any foundation for the argument, inasmuch as I consider that an assembly may be shown to be unlawful by evidence of overt acts of an intent to commit any offences, whether within or outside the 2nd section of the Act of 1887. But, assuming that they are to be treated as allegations of distinct offences, is it possible to conceive a particle of evidence, given as to any one of them, that would not be relevant and admissible on the charge of unlawful assembly. Though asked to say what evidence, or class of evidence, would not be admissible on the charge of unlawful assembly, which would be admissible if the separate charges were being separately tried, Counsel for the defendants were unable to point to any. If, as the result of any hypothesis, or as the outcome of the widest speculation, I thought that even a microscopic piece of evidence was improperly received, I would give the defendants the fullest benefit of it. The separate charges in respect of which evidence is alleged to have been given are three in number, (1) Causing terror and alarm to the Queen's subjects and particularly to John Fahy (2) Intimidatory language and (3) The uttering of words intended to incite to a criminal conspiracy. I cannot imagine how any evidence to establish these charges could not be evidence of unlawful assembly, once it is admitted that to establish the latter all the circumstances of the meeting are to be regarded. As Lord Fitzgerald puts it in the charge to the Dublin Grand Jury to which I have already referred, "but especially and above all the speeches (if any) which were delivered on the "occasion," are to be considered. It is clear to my mind that the evidence of the defendants having made use of language of the character complained of in these averments is the very class of evidence that would establish unlawful assembly. If so, it can make no difference whether these charges were entered on as separate charges, or as mere overt acts of unlawful intent. There is no question here as to the sufficiency of the evidence. The latter has not, though it might have, been brought before us, and there is not a suggestion that, as a matter of fact, it is not ample in support of the only charge on which the Justices convicted, namely, that of unlawful assembly to the disturbance of the public peace and with intent to intimidate John Fahy.

I am, therefore, of opinion that we should answer the question put to us by the Magistrates in the affirmative and affirm the conviction.

O'DONNELL and OTHERS *v* MOLONY.

KENNY, *J.*:—

This case differs in several essential particulars from that of Owens *v.* Tyacke. (1) The Magistrates have not, in their order, treated the averments of acts at the alleged unlawful assembly as separate charges, but, on the contrary, have adopted much the same line of reasoning that I have applied in Owens's case, and have treated the charge as a single and indivisible one of unlawful assembly, with the illegal objects superadded and found. (2) What are called the separate charges are not such as would have been triable summarily before a specially constituted Court if the district had been proclaimed, but are altogether outside the Second Section of the Act of 1887 and (3) The evidence taken below is incorporated with the case, and we have to say whether it is sufficient to maintain the conviction.

There were five defendants in the summons, but this case is stated at the instance o three only, namely, Messrs. O'Donnell, Johnston and McManamy. Mr. Tully, the fourth defendant, it is stated has appealed; and the case was dismissed without prejudice as against the fifth defendant, Mr. Gilmartin. Furthermore, the Magistrates found that there was no evidence to support the averments of tumult and alarm, and in their order of conviction the words of the charge in which the meeting is alleged to have been tumultuous, and to the disturbance of the public peace, and to have been the cause of alarm, are all omitted. The conviction is in express terms for taking part in an unlawful assembly, and that charge is, like the charge in Owens's case, followed by a "to wit" and accompanied by an allegation of assembling together (leaving out the word "unlawfully") and of uttering words, while so assembled, calculated unlawfully to incite persons not to discharge their legal obligations, and to enter into a criminal conspiracy for that purpose, and to continue and persist in an illegal combination for the purpose of injuring Lord de Freyne.

The three defendants who required this case to be stated contended below that there was no jurisdiction to convict—(1) Because the district was not proclaimed, and the complaint comprised offences that could not be summarily disposed of in a district not proclaimed; and (2) because there was no proof of an unlawful assembly within Section 2, Sub-sec. 3 (*a*) of the Act of 1887, inasmuch as it asw not shown that the meeting was to the disturbance of the public peace, or tumultuous, or the cause of alarm. On the other hand, the Crown argued that the summons charged only one offence, namely, unlawful assembly, and that the several matters alleged to have taken place "while so assembled" were the respective purposes and objects, for the promotion of which the meeting was designedly convened, and that if this were not clear on the summons as it stood an amendment could be made to make it perfectly clear.

The Magistrates were of opinion that the meeting was designedly held in furtherance of the unlawful objects mentioned in the summons—that this was the charge contained in the summons—and that they had jurisdiction to hear it—and they state that they, accordingly, convicted the five defendants I have named of the offence of taking part in an unlawful assembly.

As I have already said there is a material difference between the conviction in this case and that of Owens *v.* Tyacke, inasmuch as there is a positive *finding* here of the commission of an act which may be regarded either as a distinct offence, or as merely the overt act to prove the unlawful intent essential to the crime of unlawful assembly. In Owens's case there was no finding at all on these separate averments, as the Magistrates, having segregated them, said that they had no jurisdiction to deal with them; but in my judgment on that part of Owens's case, I dealt with it from the point of view of the averments not being segregated, but forming part of one charge. I am not going to repeat the grounds for the opinion which I formed that a conviction following in the language of such a charge could not be challenged for want of jurisdiction. It is enough for me to say that I am satisfied the defendants here have been convicted of unlawful assembly alone. The conviction says so and having said so, proceeds under a sort of *videlicet* to set out the ingredients of that unlawful assembly. The averments are prefaced by the words "and while so assembled"—in my opinion clearly pointing, when taken in connection with the "to wit," to an ingredient or element of illegality itself. That element of illegality is not the *offence* charged, or on which the defendants are found guilty. The "case stated" expressly says that these averments are only the unlawful objects to further which the meeting was held. The character of the meeting can in such a case as this be ascertained only by the proof of the words and acts of the speakers at it, and the approval which they meet from those who are assembled. A meeting which was a perfectly colourless one in its inception, might by such language and approval become unlawful at any moment, at least *quoad* those who advocated and approved of unlawful objects. (Bayley, *J.*, in Hunt's case, and R. *v.* Burns, 16 Cox, C.C., 421). Regarding the conviction, as I do, as one for unlawful assembly alone, but recognizing that the wording of it, in order to make it conformable with the actual finding of the Magistrates, should be altered, I am of opinion that, under the powers given by the Case Stated Act, we should amend it by altering the averments into statements of "intents." Under the circumstances no injustice can possibly be done by such amendment. In R. *v.* Burke (Judgments of the Superior Courts, Ireland, p. 189) which came before the Court on a "case stated," an amendment of a very much wider character was made, for the offence charged and on which the defendant was convicted being, as appears from the Record, only for taking part in an unlawful assembly, without any statement whatever, of unlawful intent, the Court amended the cause of complaint by adding the words "with "intent unlawfully and maliciously to injure one Michael Cormack by ploughing up, "injuring and damaging certain grass lands, the property of the said Michael Cormack "and then in the occupation of one Michael Cody." That amendment was made because the Court thought that the substantial, though imperfectly described, charge of unlawful assembly had been investigated by the magistrates and the unlawful intent indicated in the amendment proved before them.

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As to the other grounds on which it is argued that this conviction ought to be quashed for want of jurisdiction, I have endeavoured to deal with them in my judgment in Owens's case and it would be superfluous to repeat them.

It only remains to consider whether there was evidence to support the conviction against these three defendants. The question was one scarcely referred to, and certainly not argued, until Mr. O'Shaughnessy replied, and indeed we were led to believe that it presented no features that could be successfully relied on in favour of the defendants. But Mr. O'Shaughnessy, in exercise of his undoubted right, has devoted to it the main portion of his able argument, and has raised it to a position of so much importance that we heard the Solicitor-General, at considerable length, in a rejoinder. It is contended by defendants' counsel that the objects of the meeting and the whole tone of the speeches delivered at it, with the exception of one sentence in the defendant Johnston's speech, were merely political in their character, and without a criminal tinge of any sort. It is said, and I think quite justly, that, unless from the inherent evidence afforded by the speeches themselves, no proof of criminality, or contemplated criminality, was adduced. For instance we are told that though the meeting was called by placard for the avowed purpose of enrolling people in the association called the United Irish League, and although the latter is referred to again and again in the general speeches as a body wielding great influence, and established for the purpose of "smashing landlordism," to use an expression of the defendant O'Donnell, we have no evidence whatever of the objects or purposes of the League, and cannot attach the stigma of criminality to it. The defendants are quite right in their contention that, *dehors* the speeches, no such evidence has been given before the magistrates, and unless the speakers themselves have given a criminal complexion to the association, we cannot assume that its objects and working are other than crimeless. Starting with the placard convening the meeting, its language points merely to the establishment of a Branch of the League with the view of supporting certain political demands, such as National self-government, abolition of landlordism, compulsory sale, a Catholic University, etc A Catholic clergyman, Canon Lowry, presided at the request of the defendant Johnston, who, as the rev. gentleman in his speech says, is the official organizer of the League. The remarks of Canon Lowry are, it seems to me, quite beyond hostile criticism, and their only importance is derived from the fact that he brings prominently before the meeting the fact that it is called, not to discuss the harmless political subjects on the placard, but principally to make a demand for the tenants on the landlords of the estates on the borders of Lord Dillon's property, of an abatement on their rents of 6s. 8d in the pound. That it seems to me is a perfectly legitimate object, and so long as it is pursued by legitimate methods no exception whatever could be taken to it. But the intent or object of the assembly, as charged against the defendants, is that they did not pursue legitimate methods but, on the contrary, that they assembled with the object of inciting tenants of Lord De Freyne not to pay their rents, and to enter into a criminal conspiracy, and to persist in an illegal combination for that purpose, in order to injure the said Lord De Freyne. To establish the charge against the defendants the Crown had to prove:—(1) The assembly (2) Its purpose (3) That the purpose was a common one and (4) That it was an unlawful one. Now one thing is clear on reading the speeches at the meeting, namely, that the main subject of discussion at it was the possibility of obtaining a reduction of rents on the adjoining estates of Lord De Freyne, The O'Conor Don, and other landlords The Rev. Chairman having stated that the meeting was principally called to make this demand for abatement, the second resolution proposed by the defendant, Mr. M'Manamy, and received with cheers, formulated the demand so far as the De Freyne Estate is concerned.

If the meeting had closed with Mr. M'Manamy's speech and the passing of the resolutions proposed by him, it would be difficult to say that down to that there was evidence of any unlawful intent. But he was followed by other speakers, including the defendants Messrs. O'Donnell and Johnston, and Mr. Tully. I shall not refer to the latter's speech, as he has appealed and is not represented before us. But Messrs. O'Donnell and Johnston proceeded to use language of so violent a character as, in my judgment, to leave no option to the Magistrates but to find that the meeting was an unlawful one. It must be remembered that, from the beginning to the end of the meeting, the three defendants before us never left it. They all spoke from a brake, and at the close the defendant M'Manamy read the resolutions apparently a second time, and they were then put by the Rev. Chairman. What was the purport of those speeches, and did they contain incitements of the unlawful character I have referred to? Mr. O'Donnell, who spoke as an *official* of the United Irish League, at the very outset of his speech declared that they had assembled for the purpose of banding themselves together to smash for evermore the citadel of landlordism, and for the purpose of establishing a branch of the League; and later on, referring to the demand for reduction of rent, and "the fight that "is being waged" on the De Freyne Estate, he says that the tenants are forced by circumstances to go into the fight against Lord De Freyne because they could see no reason why they should pay 6s. 8d. in the pound more than their neighbours on Lord Dillon's estate, and that when their minds are made up it will be their duty to take off their coats and fight like men, and die if necessary.

In a subsequent passage, after stating that they must be all combined if they mean to win, and that Mr. Woulfe Flanagan, who it appears from the Depositions was Lord de Freyne's agent, would be collecting rent the next day, he says. "Well, it remains with yourselves "whether he receives his full pound of flesh or not. I would be going outside the path of "duty if I told you not to pay or if I told you to pay . . . if he gives you 6*s.* 8*d.* in the "pound, well, then you might be striking a good bargain and have a deal with him." He also reminds his listeners that a year ago at a place called Fairy Mount he had asked the people to agitate and combine and demand a reduction of rent, and having then made a reference to Mr. Woulfe Flanagan, he was unable to finish his sentence amidst the groans which the reference provoked. He dealt also with the subject of "Grabbers," and told the meeting that when they organised this branch of the United Irish League they would not be doing their duty unless they fought land grabbers right, left, and centre. This sentence immediately follows, "Unless you pledge yourselves to purify the district from this "terrible disease that has set in, and I say it deliberately . . . When I tell you I "would not give you three thraneens for a branch of the League where a grabber would "be allowed to live" The Solicitor-General has characterised those words as infamous. I regret to say that having regard to the class of people to whom the observations were addressed I cannot disagree with him. They amount to an incitement either to murder, or to a course of conduct directed against a fellow human being which will effectually drive him from the place where he has a right to live and earn his livelihood. Whichever construction be adopted, and I am willing to adopt the less extreme of the two, it shows *what* this "official of the League" considered to be the methods which a branch of that body ought to employ in order to gain the ends of those whom he was addressing.

The defendant Johnston, the United Irish League Organiser, followed. He tells his audience that the cause of the tenants on the estates in that parish and on the neighbouring estates is the great cause of that assemblage, and that the branch of the League when established will be worked for the benefit of the *movement* which the tenants have on foot for betterment of their position; and after referring to the De Freyne and O'Conor Don Estates and others, he tells the people that they have a perfect right to combine and "that the sinews of war is being planked down all over the associated estates." Then follow these significant words—"Flanagan went to Frenchpark and he got no rent; "Flanagan went to Castlerea and he got no rent; and Quin, of the Murphy Estate, came "to Ballaghadereen, and he got no rent either. And why did they get no rent? Because "they were not treating the tenants honourably, because they were not treating them "justly." I cannot imagine language more calculated to incite the people not to pay their rents than this, but if any question remained as to its object, it would be removed by the following sentence which is that which Mr. O'Shaughnessy feared bore some colour of criminality.—"Make it hot for the landlords, as Mr. Dillon said at French-"park, that so long as they deny you justice you will deny them rent. So long as "they deny you 6*s.* 8*d.* in the pound, the same as the Dillon tenants have got, so long "will you stand out firmly, honourably, and above board against them. That is the "question now before you, and it is time for you to show what stern men can do."

I can put no other construction on the language thus used by Messrs. O'Donnell and Johnston (the evidence given of which was, I may remark, not subjected to any cross-examination on behalf of the three defendants), both of them officials of the United Irish League, than that their object was to incite the tenants, on (amongst others) the De Freyne Estates, not to pay their rents at all, unless they got an abatement; that they recognised the existence of a movement already begun for the same purpose; and that, in advising the establishment of a branch of their Association which was to give strength and support to the tenants' combination, they were inciting to a criminal conspiracy. It is needless to say that such incitements were, as alleged in the charge, for the purpose of causing injury to Lord De Freyne.

In my opinion this meeting, however innocent it may have appeared at the commencement, became an unlawful assembly, and all these speakers, who remained together throughout the delivery of the speeches, and all others who knowingly associated themselves with them on that occasion became and were guilty of taking part in that unlawful assembly. I am further of opinion that the evidence was ample to support the finding of the Magistrates.

The question put to us ought to be answered in the affirmative and the conviction affirmed with the necessary amendment that I mentioned.

OWENS *v.* TYACKE.

JOHNSON, *J.*:—

My brother Kenny has examined these two cases of Owens and O'Donnell so fully and in detail that it is not necessary for me to occupy much time The defendants have been convicted by justices in Petty Sessions under their summary jurisdiction of the offence of taking part in an unlawful assemhly contrary to the Crimes Act, 1887, sec. 2, sub-sec. 3 (a) in a district not proclaimed under sec. 5 of that Act, and being dissatisfied with the determination of the justices, as erroneous in point of law, the defendants required the case now before this Court to he stated. No ohjection has heen made to the case so stated, nor has any application heen made to this Court respecting it. It is contended for the defendants that the summons is wrong in frame, and the procedure and determination of tbe justices erroneous in point of law. The question to be decided is a dry question of law. What, in law, constitutes an unlawful assemhly depends on the circumstances existing at the time, and for tbe matter in hand it is sufficient that Burke's case (*a*) bas decided that an assemhly of three or more persons met together to give effect to an unlawful purpose, is an unlawful assembly by reason of the intent with which it is held This amounts to the definition of an assemhly unlawful at Common Law, as Fitzgerald, *J.* instructed a Grand Jury (*b*) "an assembly of three or more persons met together to carry "into effect some illegal purpose, is an unlawful assembly at Common Law." Such an assembly therefore is, wben it has met, an unlawful assembly, by reason of its intent or purpose, within the Crimes Act, sec. 2, sub-sec. 3 (a). Tbe merely meeting for an unlawful purpose, but separating without executing that purpose constitutes an unlawful assemhly (*c*). To ascertain this intent or purpose, Fitzgerald, *J.*, in the case to which I have referred, says regard must be had "to the object of the "meeting, the placard or advertisements by which it was convened, the conduct of those "comprising it, their numbers, and all" (the learned judge does not say some, but *all*) "the surrounding circumstances hut especially and above all the speeches (if any) delivered "on the occasion." This purport or intent therefore is evidenced by the acts and words on the occasion. "The law," says Coke, (*d*) "adjudges hy the subsequent acts *quo* "*animo*, to what intent," (in the present case the assemhly met) "for *acta exteriora* "*indicant interiora secreta.*" The evidence before the justices is not before this Court, but we must take it that it legitimately satisfied the justices that the assemhly in question was an unlawful assembly within the Crimes Act, and within their summary jurisdiction to deal with. Tbe defendants appeared with Counsel on the summons set out in the case, and were thus apprised beforehand that the offence charged against them was taking part in any unlawful assembly at a specified place and time, and that tbis was what they were called upon to answer. The object of a Petty Sessions summons is to inform the defendant of tbe complaint alleged against him, and much of the argument here has been devoted to verbal criticism on the way the summons in this case has heen drafted, which in my opinion is not to be approved of But a Petty Sessions summons is not a pleading—it need not be framed in absolutely technical terms—it is not to be construed with the strictness of an indictment, nor is it demurrable or objectionable as an indictment (notwithstanding the power of amending indictments under the 14 and 15 Vic., c. 100) may be. By the Petty Sessions Act "no objection shall be taken or "allowed in any proceedings to any . . . complaint—summons . . . or other "form of procedure under the Petty Sessions Act for any defect therein in substance or "in form." (See Rodgers *v.* Richards). Amendment is not necessary—the objection shall not he taken and if taken shall not be allowed. What is necessary is that the defendant shall he informed by the summons what is the complaint against him. The justices had jurisdiction to entertain tbe charge of taking part in an unlawful assembly and to enter on this inquiry. The charge or complaint in this summons is that of a specified time and place within the jurisdiction of the justices, the defendants unlawfully took part in an unlawful assembly. This is the alleged offence, the substance, gist, and gravamen of the whole complaint and charge. Then under a videlicet, which those who are curious in old law will find explained in 1 Chitty Cr. L. 226, it proceeds to set out the particular character of this alleged unlawful assembly. That the defendants with others exceeding five in numher unlawfully assemhled together tothe disturbance of the public peace and (1) with intent to intimidate John Fahy, and (2) with intent to prevent certain other tenants aftermentioned from fulfilling their legal obligations. Proof by legal evidence of either of these intents, which it is not contended are not unlawful, is sufficient to sustain the charge of an unlawful assembly, and all the conduct, acts, words and speeches of the parties assemhled on the occasion are the evidence by which such intent is to he proved, and all who joined in or countenanced or supported such an assembly took part in the unlawful assemhly, and are criminally responsible for taking part in it. In R. *v.* Gulstone it was held that in an indictment for riot it ought at that time to have been shown by the indictment what unlawful acts the defendants assembled to do, that the Court might judge whether the act were unlawful or not. Coming down to tbe modern time of Burke's case, the summons merely stated that the defendants "knowingly took part in an unlawful assemhly," all the evidence having, I apprehend, been sent up with the case stated, the Court amended the summons

50 & 51 Vic., c. 20.

(*a*) Crimes Act Cases, 189.

(*b*) *See* Molloy, J.P, 105.

(*c*) Patteson, *J.*, R. *v.* Birt, 5 C. & P., 154; 3 Inst. 176.

(*d*) 8 Co. 146 b.

14 & 15 Vic., c. 93.

1892, 1 Q.B. 555.

Ld. Raymond, 1210.

Supra.

(and the conviction with it), by stating the very acts which evidenced the intent which made the assembly unlawful. "That the defendants did take part "in an unlawful assembly" (That was the gist of the summons.) "That is to "say did with a number of persons exceeding three assemble together with intent "unlawfully and maliciously to injure one Cormack by ploughing up injuring and "damaging certain grass lands his property and then occupied by one Cody." These acts are substantive offences under the 24 & 25 Vic., c. 97; the incitement to them was in itself a common law misdemeanour and even counselling another to commit an offence punishable on summary conviction is in itself an offence under the Petty Sessions Act, sec. 22; but they were not so charged against the defendants by that amended summons; they were alleged and proved on the charge of an unlawful assembly as evidence of the intent which made the assembly an unlawful one. Accordingly the summons in the present case proceeds to state the acts relied on as evidence of the unlawful intent which made the assembly, in which the defendants were charged with taking part, an unlawful one, "and while so assembled did cause terror and alarm to His Majesty's quiet and "peaceable subjects, and particularly to John Fahy;" and then (with a profusion of particular and technical language which might with advantage have been abridged) the summons elaborates evidence of the before averred intents, by stating as to the first intent that, while so unlawfully assembled, the defendants used and uttered words calculated and intended to intimidate Fahy, and to incite others to intimidate him, on account of his having done what he had a legal right to do, viz., to occupy certain lands; and by stating as to the alleged second intent that, while so unlawfully assembled, the defendants used and uttered words calculated and intended to incite persons who were tenants legally liable to pay certain rents to enter into a criminal conspiracy not to discharge their legal obligations and not to pay the rents legally payable by them and thereby to injure the persons entitled to receive such rents. These statements of acts, utterances and conduct of the assembly appear to have been introduced into the summons as, and if proved would be relevant to and evidence of the alleged unlawful intents, evincing the unlawful character of the assembly with taking part in which the defendants were charged. They are not, in my opinion, stated or charged as independent, substantive, indictable or other offences as contended for by the defendants. The summons is one complaint or charge of an assembly unlawful by reason of its alleged unlawful intents or purposes, at unnecessary length setting out and thus in the summons itself informing the defendants of, evidence admissible and to be relied on to establish the unlawful intents or purposes of the alleged unlawful assembly. The justices found it proved (and this was for them on the evidence) that the meeting was held under such circumstances as to render it an unlawful assembly to the disturbance of the public peace and with intent to intimidate Fahy, and they state that it was admitted if this had stood by itself alone in the summons it would have been within the jurisdiction of the justices to decide summarily. But the proof of this intent was sufficient to sustain the complaint or charge. The justices yielded (in my opinion erroneously) to the contention, or rather the assumption, on behalf of the defendants that the summons included different charges, some within, and some not within, their summary jurisdiction, and split the one charge in the summons into different pieces; but in finding the assembly, disturbance of the peace and unlawful intent respecting Fahy, the justices without more found enough to sustain the conviction.

O'DONNELL and OTHERS, - - - - *Appellants,*

MOLONY, - - - - - - *Respondent.*

JOHNSON, *J.*:—

This case stated comes before the Court under circumstances not precisely the same as those in Owens's case principally because the evidence is sent up with the case, and the summons was amended by the justices by eliminating from it the averments of tumult and alarm. The further brief amendments for which the Solicitor-General applies, seem only to state in a more precise and formal manner what in substance is already in the summons and within the jurisdiction of the justices and are therefore not in any way to give jurisdiction, and I therefore think that the provisions of the Petty Sessions Act, sec. 39, apply to the summons as it stands; but if the Solicitor-General's application is pressed it should, I think, be granted. The objections in this case on the part of the defendants are substantially and in effect (except so far as they arise on the evidence) similar to the objections in Owens's case and for the reasons which I have expressed in Owens's case, which I will not occupy public time by repeating, I think these objections are not well founded in law or fact. It therefore only remains to see whether the justices, in this special tribunal created by the Crimes Act, 1887, sec. 11, sub-sec. 6, had evidence before

them in their summary jurisdiction from which they might legitimately come to the conclusion that the defendants were guilty of taking part in an unlawful assembly against the provisions of the Crimes Act, sec. 2, sub-sec. 3 (a), which, in my opinion, is the complaint or charge—the only complaint or charge—against them, alleged in the summons and of which they have been convicted by the justices. The evidence was read and most fully reviewed and criticised by both Mr. O'Shaughnessy and the Solicitor-General and, therefore, I will not go through it at length again. This question, like the question for decision in Owens's case, resolves itself into a dry question of law on the evidence, and if it had arisen in a civil action before a jury I think the judge would not have been justified in withdrawing the case from the jury on the ground that there was no evidence proper to be submitted to them for their consideration. No more efficient test than this occurs to me. The credibility, weight, and sufficiency of the evidence was for the justices, and, under these circumstances, I cannot say that their determination was erroneous in point of law, and I therefore think that their conviction should stand; but I believe we are all agreed that the drafting of the summons in these cases ought not to be followed in future.

THE KING (TYACKE) *v.* OWENS AND SIX OTHERS.

3rd Feb, 1902. ANDREWS, *J.*:—

The prosecution in this case was under Section 2, Sub-section 3 (a), of the Criminal Law and Procedure (Ireland) Act, 1887 (50 & 51 Vic, c. 20), by which any person who shall take part in any riot, or unlawful assembly, anywhere in Ireland, may be prosecuted before a court of summary jurisdiction under that Act. The summons (to which I refer) commences by charging that on the 17th of November, 1901, at Cloonfad in the County of Roscommon (which was not a proclaimed district) the defendants did unlawfully take part in an unlawful assembly, and it then proceeded, after the words "to wit," to enumerate a number of acts alleged to have been done on that occasion by the defendants with others the doing of which by the defendants would unquestionably make the assembly an unlawful assembly as regards them. I concurred in the decision in the case of the Queen *v.* Burke (Crimes Act Cases, p. 189) that the words "unlawful assembly" in Section 2, Sub-section 3 (a), of the Act of 1887 cannot be limited to that particular kind of unlawful assembly which exists in cases of riot, and I retain that opinion. Some of the acts so enumerated would no doubt in themselves amount to offences the trial of which would be outside the jurisdiction of the court of summary jurisdiction before which the prosecution was brought; but everyone of these acts could be legitimately given in evidence to show that the assembly in question was an unlawful one. It appears from the case stated that the contention for the defendants before the justices who constituted the Court was that because the defendants were, as was alleged, charged in the summons with indictable offences which could not be heard and determined by a Court of Summary jurisdiction, the Justices were debarred from hearing and determining any part of the complaint, even though what is referred to in the case as the first charge in the summons was admitted to be within their jurisdiction had it stood alone. The justices state that they held that the other matters alleged in the summons were separate charges, as to which they had no jurisdiction and that they agreed to state a case as to whether their inclusion in the summons ousted their jurisdiction on the whole complaint; but being of opinion that the defendants were guilty of unlawful assembly, as charged in the so-called first charge, and that they had jurisdiction to hear and decide it, though they had not jurisdiction to hear and decide the other so-called charges in the summons, they gave judgment against the defendants, convicting them of having taken part in an unlawful assembly at the time and place aforesaid, to wit that they with others to the number of five or more unlawfully did assemble together to the disturbance of the public peace, and with intent to intimidate one John Fahy. This conviction is in my opinion good on its face, and no question has been raised as to the sufficiency of the evidence to sustain it. It was argued before us on behalf of the defendants that the summons contained a compound charge consisting of several different offences, some of which the justices had no jurisdiction to hear, and determine; that as they state that "the charge was duly heard before us," they must be taken to have heard the whole compound charge; and that inasmuch as they had no jurisdiction to hear or determine some of the offences the whole of the proceedings on the summons were vitiated, and the convictions should be quashed.

I think the contention for the defendants before the justices (who yielded to part of it) and the arguments for the defendants before us proceeded on what I regard as a mistaken assumption as to the character of the summons, the true construction of which is in my opinion the first question to be determined in this case.

Summonses before courts of summary jurisdiction are not open to the objections which lie to indictments, and cannot be criticised as indictments may be.

Section 11, Sub-section 3, of the Act of 1887 provides that an offence prosecuted summarily under that Act shall be prosecuted in the manner provided by the Petty Sessions (Ireland) Act, 1851, and subject to the provisions thereof, save so far as altered by that section. The 39th section of the Petty Sessions Act (14 & 15 Vic., c. 93) provides, amongst other things, that no objection shall be taken, or allowed in any proceedings to any information, complaint, summons, warrant or other form of procedure under that Act, for any alleged defect therein in substance, or in form. Now in approaching the question of the construction of the summons in this case I may observe that it must reasonably be taken to have been intended to present a complaint which the justices had jurisdiction to hear and determine; and assuming for a moment that the summons is reasonably capable of two constructions, one of which would sustain, and the other invalidate the convictions, the former construction is in my opinion to be preferred, in the absence of sufficient reasons to the contrary. This case has been properly argued before us as involving a question of law, and nothing more and, unless the defendants' contention on the question of law is right, it cannot be assumed that any injustice has been done to the defendants. The question we have to decide is wholly distinct and apart from any question of merits or demerits on either side.

The fact that the justices were of opinion that the summons contained separate charges, some of which were outside their jurisdiction, and which they, therefore, exoluded from their conviction, does not either oblige this Court to adopt the same construction of the summons, or invalidate the conviction, if the summons does not, upon its true construction, contain more than one charge viz. a charge of unlawful assembly; and in my opinion it does not. I think all that follows the words "to wit" in the summons is no more than an enumeration of acts the commission of which hy the defendants made the assembly unlawful as regards them, and that none of these acts is charged as an offence to be heard and determined by the justices, as such, but that all of them are simply alleged as acts relevant to the charge of unlawful assembly, inasmuch as if committed, they would render the assembly unlawful, as regards those who committed them; and even assuming that the summons is reasonably capable of the construction that these acts are charged as offences, to be tried as such, the construction which I adopt is in my opinion the more natural, and reasonable one; but I confess, having regard to the frame of the summons, and the known surrounding circumstances, including the provisions of the Act of 1887, and the constitution of the Court, I do not think that the construction contended for on behalf of the defendants, even if a possible one, is a reasonable one. I therefore think it unnecessary to enter upon the consideration of the authorities which were referred to in the course of the arguments, as, according to my construction of the summons, no one of them is in my opinion an authority against he convictions in this case.

The question on which our judgment is required ought, therefore, in my opinion, to be answered thus viz.—That this Court being of opinion that upon the true construction of the summons it contains one charge only, namely of taking part in an unlawful assembly, which was within the jurisdiction of the justices, their determination in convicting the defendants of having taken part in the unlawful assembly so charged was, on the case as stated, correct in point of law, and the convictions ought, therefore, to be affirmed.

THE KING (MOLONY) *v.* TULLY, O'DONNELL, JOHNSTON, M'MANAMY AND GILMARTIN.

ANDREWS, *J.*:— 3rd Feb., 1902.

The prosecution in this case, as in the case of The King *v.* Owens and Others, was under, section 2, sub-section 3 (a), of the 50 & 51 Vict., c. 20 (1887).

The summons (to which I refer) commences by charging that on the 1st of December, 1901, at Gurteen in the County of Sligo the defendants took part in an unlawful assembly, and it proceeds, after the words "to wit," to allege, in terms which I abbreviate, that they and others unlawfully assembled to the disturbance of the peace and caused alarm to His Majesty's peaceful subjects, and while so assembled spoke words intended and calculated (1) to incite tenants of Lord De Freyne not to pay their rents, and (2) to incite them to enter into a criminal conspiracy not to pay their rents and (3) to incite tenants of Lord De Freyne, who had entered into an illegal combination not to pay their rents to continue in that combination.

The case in this prosecution has been stated pursuant to the requisition of the defendants O'Donnell, Johnston, and M'Manamy, who with the defendant Tully were convicted hy the justices.

The defendant Tully as we are informed has appealed, and his conviction is not before us for sither affirmance, amendment, or reversal. The prosecution against the defendant Gilmartin was dismissed without prejudice.

It appears from the case stated that it was contended on behalf of the defendants O'Donnell, Johnston, and M'Manamy that the justices had not jurisdiction to hear and determine the complaint on two grounds viz.—first that the district was not proclaimed, and that the complaint comprised offences which could not he summarily disposed ot in a district not proclaimed.

According to the view I take of the summons, and conviction, and the scope of the words "unlawful assembly" in Section 2, Suh-section 3 (a), of the Act of 1887 it is immaterial that the district was not proclaimed. These words "unlawful assembly" extend in my opinion to any unlawful assembly, and three or more persons assembled with intent to commit unlawful acts is an unlawful assemhly.

The second ground was that there was no evidence that the said meeting was an unlawful assembly within the meaning of Section 2, Suh-section 3 (a) there being no evidence that it was a disturbance of the peace or tumultuous or caused alarm as alleged.

The justices hsld that there was no such evidence, but, as I have said, the words "unlawful assemhly" in Sub-section 3 (a) extend, in my opinion, to any unlawful assemhly, and cannot be limited to that particular kind of assembly which is unlawful by reason of its heing tumultuous, and causing alarm.

The arguments hefore us for the defendants O'Donnell, Johuston and M'Manamy took a wider range, and it was contended here that the summons was one compound charge of distinct offences, some of which the justices had no jurisdiction to hear and determine, and that the conviction was a conviction of such one compound charge, and therefore invalid; and it was further contended that even if the charge was hy amendment or otherwise to he treated as a charge of unlawful assembly only, and the conviction was to he similarly treated, still there was no evidence to sustain the conviction.

I am not to be taken as in any way suggesting, much less deciding, that if either of these contentions is sustainable the convictions can he supported.

I proceed then to consider whether any of tbese contentions is sustainable.

I am not an apologist for defects in summary proceedings, nor am I to be taken as approving of the form of the summons in this case as a precedent, but the strictness with which proceedings on indictments are dealt with is not to be applied to summary proceedings. This is apparent from Section 39 of the Petty Sessions Act, 14 & 15 Vic., c. 93; Section 76 of the County Officers and Courts Act, 40 & 41 Vic., c. 56; and the 6th Section of the Justices Case Stated Act, 20 & 21 Vic., c. 43. In summary procsedings sufficiency in substance is not to be subordinated to deficiency in form.

It appears from the case stated that it was contended for the complainants before the justices that the summons charged one offence only, namely taking part in an unlawful assembly, and that the several matters alleged in the summons after the words "peace-" able suhjects" were the respective purposes and objects for the promotion of which the meeting was designedly convened, and if this were not clear on the summons an amendment could he made to make it perfectly clear. There was no ambiguity in this statementof wbat the defendants were prosecuted for, and they could have heen in no way misled by it.

The justices state that it was in their opinion established that the meeting was designedly held in furtherance of the unlawful ohjects mentioned in the summons, hut that there was no evidence to support the averments of tumult and alarm, and that they convicted the defendants O'Donnell, Johnston, and M'Manamy of taking part in an unlawful assembly, being of opinion that this was the charge contained in the summons. I am also of that opinion. The conviction, which I abbreviate, is in substance in the following form, namely, a conviction of the defendants Tully, O'Donnell, Johnston, and M'Manamy for that they on the day and at the place aforesaid took part in an unlawful assembly, to wit, that they with others assembled together and while so assemhled spoke (1) words intended and calculated to incite tenants of Lord De Freyne not to pay the rents for which they were liable; (2) and words intended and calculated to incite these persons to enter into a criminal conspiracy not to pay their rents; and (3) to incite tenants of Lord De Freyne who had entered into an illegal comhination not to pay their rents to continue in such illegal combination.

Admitting that these incitements would in tbemselves constitute offences outside the justices' jurisdiction to try as such, even if the district had been proclaimed, still they could all bs given in evidence to show that the assembled persons who so incited these tenants were guilty of an unlawful assembly. It is necessary to construe the summons and the conviction, and in my opinion the charge in the summons was a charge of unlawful assembly alone, and not a charge, as such, of any of the offences which the alleged incitements would in themselves amount to, and those incitements are stated in the summons not as offences to be tried, as such, by the justices, but as matters showing that

the assembly was an unlawful one; and in my opinion the conviction is a conviction of taking part in an unlawful assembly and nothing more. Upon this question of construction I need not repeat what I have said in relation to it in my judgment in the case of the King *v.* Owens.

I agree that what makes an assembly unlawful is its unlawful intent but the words "with intent" are not essential to either a charge, or a conviction, of unlawful assembly. It is sufficient for each if it discloses and shows the unlawful intent. If three or more persons assembled together deliberately commit, while so assembled, manifestly unlawful acts, either by speeches or otherwise, they must be taken, in the absence of any evidence to the contrary, to have intended to commit them. An intention to commit manifestly unlawful acts is an unlawful intent, and the commission of them with unlawful intent by the persons so assembled shows the unlawful intent of the assembly. In my opinion the unlawful intent in this case is sufficiently shown both in the summons and the conviction. The well-considered amendment made by the Court in the case of The Queen *v.* Burke stated the act of ploughing up the grass lands by which the intent to injure was shown. The amendment in that case was in the following words, viz.—"did take part in an "unlawful assembly, that is to say, did with a number of persons assemble together with "intent unlawfully and maliciously to injure one Michael Cormack by ploughing up, "injuring, and damaging certain grass lands, the property of the said Michael Cormack, and "then in the occupation of one Michael Cody."

Then, was there evidence in this case to sustain a conviction? The question for us is not as to the weight of the evidence, that was for the justices; the question is was there any evidence upon which they, as the judges of the evidence, were at liberty to convict. In considering the evidence they were not bound to abandon their common sense, or disregard such general knowledge as experience had given them of the effect which the speeches of the defendants would be likely to produce upon the minds of those to whom they were addressed; nor were they bound to accept the protestations of the speakers as to the lawful character of their aims and objects, or their disclaimers of illegality, if the justices had evidence to the contrary. I do not think it requires the high authority of Mr. Justice Bayley, whose charge in the (1) King *v.* Hunt has been referred to, that an assembly even if met for lawful purposes, and in its inception a lawful one, may at any time by the unlawful conduct of three or more of its members become, as regards them, an unlawful assembly. This appears to me to be a self-evident proposition of elementary law. Assuming that a meeting might be lawfully assembled to support the objects mentioned in the placard announcing the meeting held at Gurteen on the 1st of December last, and to support the four resolutions proposed at that meeting, we cannot stop there. We have to go on to consider what was done at the meeting while assembled. Now although it was ostensibly convened for the purposes mentioned in the placard, and the four resolutions referred to were all that were proposed, it is not unimportant to note that the chairman at the commencement of the proceedings stated that the meeting was principally called to demand for the tenants of the estates on the borders of Lord Dillon's property (which had been bought by the Congested Districts Board, and the tenants on which had been given an abatement of six shillings and eight pence in the pound), that the landlords of these other estates should give them an equal abatement. I think it was open to the justices to come to the conclusion from this, and the subsequent proceedings, that in making the statement I have referred to the chairman gave the key-note for what was to follow, and that the formation at Gurteen of a Branch of the United Irish League was, in part at least, for the support and furtherance of this demand. The defendant M'Manamy (called M'Menamin in the evidence) next proceeded to propose the four resolutions, the second of which embodied this demand, and pledged those who should accept it to support the De Freyne Tenants' Fund. What the state of things on the De Freyne estate at that time was, so far as it is material to this case, appears from speeches which followed.

(1) State Trials, new series, p. 436.

I shall only refer to some of the passages in those speeches. I am aware that there are various other words and passages which were relied on as showing the absence of illegal intent, but it was for the justices to consider the whole, and the question is had they in the speeches sufficient evidence upon which they might lawfully convict. The defendant Tully (whose speech I must refer to although we are informed that his conviction is the subject of appeal) after urging the assembly to join the League and act on the advice of its leaders, told his hearers that they knew, as he knew, that the men of the De Freyne estate had gone forth in the fight, with the flag of freedom in their hands, and that those whom he addressed were there, and he was there, to give a word of encouragement to those brave fellows in the struggle, and that he thought he could pledge his hearers that they would spend their last penny in supporting these men. What this fight and struggle were appears from subsequent speeches. The defendant O'Donnell, who next spoke, after asking the assembly to join the League, told them it was established *(inter alia)* for smashing landlordism, and banishing it out of the country, and, as he gathered from the feeling expressed there that day, the men of Gurteen would co-operate heartily with the men of the other portion of the De Freyne estate, and get back that portion of which they were robbed in days gone by. He said there was another question which he believed affected the people of that locality very much indeed, that was the reduction of rents

that was being demanded by the tenants of the De Freyne estate;—that on a previous occasion at Fairymount he thought it part of his duty to ask the people to follow the example of the Dillon tenants, and to agitate, combine, and demand a reduction of their rents. He said with regard to the fight that was being waged on the De Freyne estate he did not come there to urge his hearers on in this struggle; that they were forced by circumstances to go into this fight against Lord De Freyne, because they could see no reason why they should pay six and eight pence in the pound more than their neighbours on Lord Dillon's estate, and he told them the moment they made up their minds that justice was on their side, and robbery on the other, their duty would be to take off their coats, and fight like men, and die if necessary. He said he understood that Wolfe Flanagan (the agent of Lord De Freyne) would be collecting rents to-morrow, and added:—"Well, it remains with yourselves whether he receives his full pound of flesh or "not." I think it was competent to the justices to infer from this speech, taking it altogether, (and I have only referred to what appear to be material parts of it in reference to this case) that it intentionally conveyed to the assembly the unlawful incitements mentioned in the conviction.

The defendant Johnston next spoke and in the course of his speech said that the cause of the tenants on the estates in that parish, and on the neighbouring estates, was the great cause why that vast multitude of people were gathered there that day; that many had come from various places he referred to, and from around the entire county, not to demand any unjust or impossible abatement, but to demand the common justice extended to the Dillon tenants; that there was nothing illegal in that; that they were prepared now to organise a branch of the United Irish League which, when established, would be worked for the benefit of the movement that the tenants had on foot for the betterment of their position, that if they had the same privileges, and opportunities, and facilities, as the Dillon tenants had they would be quite content; and he added "you haven't these "advantages then; and when you haven't these advantages it is your duty, as Irishmen, "to combine and get them by every possible means" He said he knew of the sinews of war being planked down all over the associated estates; that Flanagan went to Frenchpark, and got no rent, and to Castlerea and got no rent, and Quinn of the Murphy estate came to Ballaghadereen and got no rent,—Why?—because they were not treating the tenants honourably, and justly, and he challenged the Government to take any action to drag out of the tenants on these estates the 6*s*. 8*d*. in the pound more than they were forcing through a Department of their own from the Dillon tenants. He said if they succeeded in forcing these people either to sell or give a reasonable reduction, they would be striking a blow against landlordism, and, towards the end of his speech, he said, "Make it hot for the landlords, as Mr Dillon said at Frenchpark, that so long as they "deny you justice you will deny them rent. So long as they deny you 6*s*. 8*d*. in the "pound, the same as the Dillon tenants have got, so long will you stand out firmly, "honourably, and above board against them. That is the question now before you, and it "is time for you to show them what stern men can do." I think the justices might well infer from this speech also (to only a few portions of which I have referred) that it intentionally conveyed to the assembly the unlawful incitements mentioned in the conviction. The final speech was made by the defendant Gilmartin, who was not convicted. During the arguments it was asked why was he not convicted, and why was not the chairman convicted. That was for the justices to decide. Whether they ought, or ought not, to have been convicted is not the question before us, and I must abstain from discussing it. It is with the conviction of the defendants O'Donnell, Johnston, and M'Manamy that we have to deal. District-Inspector Molony gave evidence that he saw the five defendants at the meeting, and that each of them remained from the opening remarks of the chairman until the closing remarks by the defendant Gilmartin, and I think it was competent to the justices to infer from the prominent part taken by the defendants O'Donnell, Johnston, and M'Manamy in the proceedings, and from their all remaining there until the end, that they all countenanced and approved of the speeches I have referred to, including what in my opinion the justices were warranted in holding were the unlawful incitements stated in the conviction. These defendants were represented before the justices by able counsel but there was no cross-examination on their behalf of the witnesses for the prosecution, nor was any evidence given on their behalf, by way of contradiction, explanation, or otherwise.

In the view I take of this case I do not consider any amendment necessary either in the summons or the conviction, nor do I think it necessary to go into an examination of the numerous authorities which were cited. The proceedings were, in my opinion, valid in substance, though open to some criticism in point of form; and I think the question on which our judgment is required should be answered thus, viz.:—That this Court being of opinion that, upon their true construction, the summons contains one charge only, namely of taking part in an unlawful assembly, and the conviction is a conviction of that charge only, which was within the jurisdiction of the justices to hear and determine, their determination in convicting the defendants O'Donnell, Johnston, and M'Manamy of that charge was, upon the case stated, and the evidence contained in the depositions, correct in point of law; and the convictions of these three defendants ought, therefore, to be affirmed.

OWENS *v.* TYACKE.

O'DONNELL *v.* MOLONY.

PALLES, *C.B.*—

What the ultimate judgment of this Court will be, at the present moment I know not. Whether it will be an amendment in at least one case, as stated at the conclusion of the judgment of my brother Kenny, or whether it will be an affirmance of both convictions, without any amendment, as stated by Mr. Justice Andrews, at present I do not know. But whichever form of order be ultimately adopted, I feel coerced to dissent from it. I am of opinion that each of the convictions before us was made in respect of a subject-matter which was outside the jurisdiction of the justices who made it, and that consequently each conviction is unlawful and void. The jurisdiction which in my opinion was absent was not only that, which in some cases has been called jurisdiction to convict, but was the wider jurisdiction, jurisdiction to enter upon the inquiry at all; the jurisdiction which, in the words of Lord Denman, in the Queen *v.* Bolton, is "determinable at the commencement, and not at the conclusion, of the inquiry"; the jurisdiction the absence of which, according to the judgment of the Common Pleas delivered by Tindal, *L.C.J.*, in Cave *v.* Mountain, rendered the convicting justices, as the law then stood, liable to an action of trespass; and which, as the law now stands, still renders them so liable, subject only to the statutory necessity of the conviction being quashed on *certiorari*.

1 Q. B. 66; 4 P. & Dav 679.

1 M. & G. 257.

At the same time, as upon some of the topics which have been discussed at the bar, and therefore necessarily referred to by my learned brethren, in the course of their judgments, I concur in the views they have arrived at, it is necessary, in order to prevent misapprehension, that I also should refer to them.

Four questions have been discussed:—

(1.) Is there evidence that the defendants in the second case—that is, O'Donnell's case—took part at Gurteen, on the 1st of December last, in an assembly for a criminal purpose?

(2.) Were that assembly and the assembly at Cloonfad on the 17th of November, unlawful assemblies within the meaning of Section 2 of the Crimes Act, by reason of their having been for criminal purposes other than that of creating tumult and disturbance?

(3.) Had the justices jurisdiction to enter upon the hearing of the charges preferred against the defendants in both the cases?

(4.) Were the convictions before us made within jurisdiction?

As to the first question, I cannot say that there is not, in the language of the speeches of the defendants upon that occasion, evidence from which a tribunal of fact might, if it thought fit, legitimately arrive at the conclusion that those speeches contained incitements to the tenants on the De Freyne estate to enter into, or if they had entered into, then to persist or persevere in, a combination not to pay their rents to their landlord unless he yielded to a demand to accept in full for such rent two-thirds of its real amount. Such a combination, although not within the Crimes Act (as it lacks the element of undue interference with volition), is beyond all doubt a criminal conspiracy. The long line of cases, of which Temperton *v.* Russell (*a*), Allen *v.* Flood (*b*), and Quinn *v.* Leathem (*c*), are typical examples—while they differ upon many matters all concur in holding that such a conspiracy as I have mentioned is criminal. Any incitement to enter into or to persevere in such a conspiracy, is consequently itself a crime at common law; and an assembly to promote such an object is, at common law, an unlawful assembly. From the above it follows that I am of opinion that there was evidence that both of these assemblies were unlawful assemblies at common law. I am further of opinion that there is some evidence that the object I have mentioned was one of those with which the particular parties before us were, on both occasions, present at the assemblies.

(*a*) 1893. 1 Q. B 715.
(*b*) 1898 Ap. Ca. 1.
(*c*) I. R. 1899. 667; L. R. Ap. Ca. (1901) p. 495.

It is said that the purposes mentioned in the placards calling the meeting of the 1st of December were legal, that it does not appear that, at first, the persons assembled were actuated by any unlawful purpose, and that therefore the charge cannot be sustained. Now, I agree that it does not appear that, at first, the persons assembled were actuated by any unlawful purpose; and if Mr. O'Shaugnessy were right in his contention that therefore the defendants in the second case should be acquitted, then for that reason, in addition to those which I shall mention afterwards, I should be of opinion that the conviction

in that case should be quashed. But I consider that it has been established as far back as our records extend, and is now beyond all question, that that is not the law. If the old text-books are examined, it will be found that the typical case is put, that if persons assemble for a lawful purpose, viz., at a fair or market, and something occurs then in consequence of which they become actuated by a common illegal purpose, that then the assembly which previously was lawful becomes unlawful. It is sufficient for me to refer to a passage in the charge of Bayley, *J.*, in the King *v.* Hunt (*a*), a charge that was afterwards brought before the full Court of Queen's Bench, and there held not to be subject to any exception:—

(*a*) 1 B. & Ald. 566.

"That number (that is, a meeting of 60,000 persons) may meet under such circumstances as by no means to raise public terror, or to raise fears and jealousies in the minds of persons in the neighbourhood where they meet, but if, in an assembly so constituted, 'met for perfectly legal purposes, any men introduce themselves illegally to give to that 'meeting an undue direction which would produce terror to His Majesty's subjects, although 59,000 out of that meeting would be perfectly innocent, there might be ten or twenty illegally assembled, and those ten or twenty would be liable to be tried upon the ground of illegally assembling there, although the assembly be perfectly legal as to the bulk of the people who were there." (*b*.) The law, which is there stated in relation to the particular assembly there pointed at—that is, one calculated to raise terror and alarm—is equally applicable to a meeting which is illegal for any other reason, though such purpose be disconnected with riot or disturbance.

(*b*) 1 St. Tr. N. S. 436.

It is said by Mr O'Shaughnessy that that case of the King *v.* Hunt is not law now. I do not agree with him. It may be, and I think it is, that juries are now more liberal than they then were, in refusing to attach criminality to acts of which the main object, or one of the main objects, is to effect political changes in the constitution, and not to inflict injury, using the word "injury" in its strict legal sense, "*injuria*." But the legal principles laid down by Mr. Justice Bayley are law to the present day, and they apply to any assembly which has an unlawful object, and especially when that object is the unlawful interference with private rights, with the rights of private property. Again, it is beyond doubt that a combination to induce the breaking of contracts is criminal. The refusal to pay more than two-thirds of a rent fixed by contract, is a breach of—or evidence of a breach of—the contract, and an assembly to promote it is unlawful.

50 & 51 Vic., c. 20.

I next come to question No. 2:—"If so, were those assemblies unlawful, within the meaning of Section 2 of the Crimes Act?" We decided in the Exchequer many years ago in the Queen *v.* Burke, that they were within that section. But The MacDermot and Mr. O'Shaughnessy have asked us not to follow that decision, and the expression was used during the argument that we "allowed" them to argue whether the case was rightly decided. Now, I wish to say that we did not "allow" anything that was not the right of The MacDermot and Mr. O'Shaughnessy to ask. It is important that it should be known that such decisions as the Queen *v.* Burke (*a*) (in the Exchequer), and decisions in the Court of Queen's Bench before the present consolidation of the Divisions, (such as the Queen *v.* Sullivan) (*b*), are not absolutely binding on this Court. That result ensues not from any mere question of practice, or merely from decisions of Irish Court It is the settled law, as laid down in England in the Court of Appeal. I refer to this, because I am anxious that parties shall have such liberty, as exists in law, to insist that some of the cases decided are not authorities which should be followed. I refer to the judgment of Bovill, *C.J.*, in Hadfield's case. He says:—"The law seems, from the cases referred to, to be clearly settled that decisions of the House of Lords are final and binding on the House itself in future cases. That principle, however, has never been applied to the superior courts of Westminster in cases where they have a peculiar jurisdiction: for instance, in the Queen's Bench, on appeals from Quarter Sessions, in the Exchequer, in matters of revenue, and in this Court on appeals under the Registration Acts, and in matters arising under the Railway and Canal Traffic Act. Wherever a new jurisdiction is given to the Courts, some time must necessarily elapse before the law can be settled, and great inconvenience and mischief would result in such cases where there is no appeal, if the Courts were absolutely bound by their decisions, though manifestly erroneous." That passage was brought before this Court in Devonshire *v.* Droghan and acted upon, the decision there arrived at being contrary to a judgment given many years before, by the then Lord Chief Justice and Mr. Justice George, from which Lord Fitzgerald dissented. I therefore hold that Mr. O'Shaughnessy was within his right in asking us to reconsider the judgment in Burke's case.

(*a*) (Judgments of the Superior Courts, Ireland, p. 189).
(*b*) (*ib.* p. 97; 22 L. R. I. 98).
L. R. 8. C. P. 313.
I. R. 1900, Vol. 2, 1877
Devonshire v. Foot. I.R. 2, C. L. 514.

The words then in the Crimes Act, which we have to construe, are these: "Any person who shall take part in any riot or unlawful assembly." There is nothing to qualify the words "unlawful assembly," save their association with "riot," the doctrine of "*noscitur a sociis*." If, however, I am right—as I shall be obliged to show, at some little length, I am afraid, hereafter, on the question of jurisdiction—that the essence of the crime of unlawful assembly is assembling for *any* unlawful intent, it would be difficult, by the mere association there with "riot" to limit the meaning of "unlawful assembly," in the mode suggested, because the criminal element that exists in it is one which, in its essence, has a much wider extent.

But that which made the matter, to my mind, abundantly clear in Burke's case, and that which I shall still act upon, is the 7th section, upon which Mr. O'Shaughnessy has so ably commented. The 7th section is the portion of the Act, and as I believe the only portion, which creates a new crime. It enables the Lord Lieutenant to declare by proclamation a particular association unlawful. It makes every meeting of the association so proclaimed an unlawful assembly; and then proceeds in these words: "And every "person calling together a meeting of such association in the specified district, or of "any members thereof as such members or anyone taking part in any such meeting, or "publishing, with a view to promoting the objects of such association, any notice of "the calling together of any such meeting, or of the proceedings at such meeting, or "soliciting in the specified district any contribution for the purpose of such association, "or in any way taking part in the proceedings thereof in the specified district, or of any "branch or meeting of it in such district, shall be guilty of an offence, and *may be pro-*"*secuted* before a Court of Summary Jurisdiction under this Act."

Do these words extend the jurisdiction of the justices under the second section? In my opinion they do not. I think that offences under Section 7 must be prosecuted under Section 2. I hold that the object of each of those sections was different. The second section was one dealing with jurisdiction, as distinct from the creation of crime. The 7th was the section which created the new class of crime, and when it directed that those crimes might be summarily prosecuted under the Act, it, to my mind, declared that they were offences prosecutable under the jurisdiction created in the earlier part of the Act, *i.e.*, that they were acts which amounted to taking part in the assembly which it declared to be an unlawful one.

This brings me to what I consider to be the important question involved in this case, the question of jurisdiction.

I first take the question common to both cases, the third. Was there jurisdiction in the justices to enter upon these inquiries? And here, to prevent misunderstanding, may I be permitted to say that I do not make, and do not intend to make, the slightest reflection upon the justices? Of course, the fact that the majority of this Court think that they were right in point of law, and thatI am wrong, entirely vindicates them—but I wish to say that even if my view of the law were the one that was to prevail, I think that, having regard to the circumstances of the case, it is impossible to say that it was not fairly open to the justices to adopt the course they did. They had there a learned counsel representing the Attorney-General, who is to be taken as acting under his immediate direction. He insisted, with all the weight of the position of the high official he represented, that the justices had jurisdiction. They yielded to his insistance—not absolutely, but subject to the safeguard to which the defendants were entitled, and which of course it was eminently part of their duty to afford them—of stating a case for this Court. By this course the defendants were not prejudiced and the questions of law were set in a train of enquiry. I trust therefore that, in the observations which I shall hereafter make, I shall be deemed to be entirely impersonal.

Had the justices jurisdiction to enter upon these inquiries? I do not think it necessary for me at present to refer to the very words of these summonses. It will be sufficient to state their general effect.

Each of them commences by charging the defendants with taking part in an unlawful assembly. Each of them then proceeds to state matter which, if it stood alone, would in law show that the assembly was unlawful, as in each intent is alleged sufficient for that purpose. But each of the summonses then proceeds to state that, when so assembled, certain acts were committed by the defendants; acts which may be divided into two categories. It is to me absolutely immaterial within which category each particular act may be ranged; it is sufficient to say that all of them were acts which were criminal at common law. Some of them were acts which would not under any circumstances be prosecutable summarily before justices, others were such as would have been prosecutable summarily, had the district been proclaimed under the Crimes Act; but it was not so proclaimed. Therefore, within whichever category these acts fall, all of them were *acts* into which the magistrates had *no jurisdiction to inquire* with a view to a summary conviction.

Here I desire to make an observation, for the purpose of limiting the application of what I shall hereafter say. I admit that the justices had a particular jurisdiction in respect of all of these offences. They were entitled with respect to them all, to examine, with a view to committing for trial. But jurisdiction to examine and commit for trial is one thing, and jurisdiction to summarily convict is another thing. A justice under one jurisdiction acts in aid of the common law and for the protection of the prisoner. Under the other jurisdiction acting in derogation of the common law, as judge and jury, he puts the accused upon his trial, and to do so he must make known to him the crime of which he is accused. The present proceeding is one in which the special tribunal, constituted by the Crimes Act, is that which is appealed to; the summonses are issued under

this particular statute; the justices are asked summarily not to commit for trial, but to convict. They have in fact convicted. It is impossible that the other jurisdiction can be fallen back upon with a view to support their right to enter upon the enquiry and indeed no attempt has been made to do so.

Now, it is necessary—and I am glad that in this I do not differ from any of my brethren—it is necessary that we should have a clear conception of the legal nature of the charge under the Crimes Act, of taking "part in an unlawful assembly." It involves two questions: first, what is the essence of criminality in unlawful assemblies; and secondly, what is the meaning of "taking part," in Section 2 of the Act?

Mr. Justice Johnson, when giving judgment, referred to a definition of "unlawful assembly," which I may say most accurately expresses what that crime is. It is when persons are assembled for the purpose of doing an unlawful act, *and do it not*. That is the essence of criminality in an unlawful assembly. I have looked into some of the older cases on the subject, and it will be found that that is its essential characteristic. I do not say that it ceases to be an unlawful assembly when the act is done; but I do say that when the act is done, then two separate and complete offences have been committed. First, the crime of "unlawful assembly," the meeting with the intent of doing a criminal act; and, secondly, the criminal act itself. Were it not that the existence, or the absence of jurisdiction to enter upon these inquiries depends upon this, I should not occupy public time by discussing a doctrine so absolutely elementary. But as so much depends on it I shall refer to two authorities.

3 Inst. 176. Lord Coke, in defining riot, says:—"Riotum in the common law signifieth when three "or more do any unlawful act, as to beat any man, or to hunt in his park, chase, or warren, "or to enter or take possession of another man's land, or to cut or destroy his corn, grass, "or other his private property, &c.—*Routa* is derived of the French word rout, and pro- "perly in law signifieth when three or more do any unlawful act of their own or the "common quarrel, &c., as when commoners break down hedges or pales or cast down "ditches, or inhabitants for a way claim by them or the like. An *unlawful assembly* "is where three or more assemble themselves to commit a riot or rout, *and do it not*."

Page 137. Lord Hale, in his *Summary* of the Pleas of the Crown (a different book from the one ordinarily referred to as his Pleas of the Crown), says:—"Riot, when above the "number of two meet to do some unlawful act, and do act it. But if they meet and *act it* "*not*, an unlawful assembly."

That being undoubtedly the proper definition of an unlawful assembly, what is the meaning of the words in Section 2 of the Crimes Act, "take part in" an unlawful assembly? This part of the Act, beyond all doubt, was not intended to create, and did not create, any new offence. I think that the expression "take part in" an unlawful assembly, although rather an untechnical expression, was used in the Act instead of the technical words, "shall be guilty of unlawful assembly," for the protection of persons charged, and to prevent justices holding that the mere presence at an unlawful assembly was sufficient ground for conviction—to bring home to the justices that, according to law, there should be something more indicating guilt, that is, indicating that the prisoners' presence there was with the intent that made the meeting illegal. It is undoubted that any act done at the assembly can be relied on as evidence of the intent with which the prisoner was there. It is evidence but no more than evidence, it is not the criminal act which constitutes the offence. I conceive that the meaning of "*taking part in* an unlawful assembly," as used in Section 2, is not the doing any particular act *at* an unlawful assembly, because that would not be the crime of "unlawful "assembly"; but it is the participation of the accused in the unlawful assembly by being one of those assembled with the intent which makes the assembly illegal.

Now, with that view of the law, I come to construe these summonses. I do not agree in the position that has been laid down by one of my learned brethren, that if there be two possible constructions of the summonses, one of which will support them, and the other of which will defeat them, that merely for that reason we should adopt the former. In my view such a principle of construction is inapplicable to proceedings before magistrates, where the matter in hand is their jurisdiction to enquire. I agree that, once jurisdiction is shown, no intendment is to be made either one way or the other in favour of, or against jurisdiction, but I have always understood that the common law was that where one is acting under a jurisdiction derogatory of the common law, such as a jurisdiction which takes away trial by jury, nothing can be intended, but everything reasonably necessary to show jurisdiction must appear on the face of the proceeding. But that is merely by the way, because my view of these summonses goes very much farther indeed. I hold that they are capable of but one construction, and that that one construction affirmatively shows an absence of jurisdiction. I arrive at that view, not by any cavilling as to whether the matter alleged consists of one or of two charges, or whether it is a compound charge or not. I arrive at it whether these are separate charges, or one compound charge composed of various different matters.

I ground my opinion upon this, that the charge which the justices are called upon to investigate, is upon the face of it, one of criminal matter, part of which is within the jurisdiction of the justices, and the other part of which criminal matter—(I care not how associated with the former)—amounts to distinct criminal offences, upon the inquiry as to which the justices have no jurisdiction to enter. I think the construction of the summonses is clearly this: "You were guilty of the crime of 'unlawful assembly,' "and when you were unlawfully assembled you committed certain crimes." Some of these crimes with which the defendants are thus charged would have been, and others would not have been, within the jurisdiction of the magistrates if this district had been proclaimed, but as matters stood, all of them were outside their jurisdiction. If then I am right as to the nature of the crime of unlawful assembly; if I am right in saying that it consists of the mere presence at the assembly with a certain intent, and not in anything that is done at the assembly (and as to this all the Court appear to be agreed), then anything that was done at the assembly in pursuance of criminal intent was an additional illegal act and not the crime or part of the crime of unlawful assembly. This is so although the act done, in addition to its being a subsequent substantive crime, is or might be evidence of the prior crime of unlawful assembly. Let anyone read one of these summonses and can be doubt that the charge is: "You were present at this illegal "assembly, and being present at this illegal assembly, you did this, which is a crime, and "you did that, which is another crime"; and now we are asked, for the purpose of sustaining these convictions, to jumble up together all these criminal acts, as to some of which the magistrates had jurisdiction, as to others of which they had not, and to say that they all constitute the crime of illegal assembly. We are to wrest the words from their context. To confuse "allegation" with "evidence," to treat as evidence of one thing that which is plainly "allegation" as distinguished from "evidence" and an allegation of a different thing, and to treat as an allegation of intent that which plainly was not intended to be such. May I ask are we to construe these documents in a different manner from that which we would have adopted had the magistrates had jurisdiction over all the acts alleged? And if they had that jurisdiction and had convicted upon the entire summons and had a subsequent prosecution been brought in respect of all or any of the criminal acts alleged in the summons to have been committed "when they were so assembled," can anyone doubt that there would have been a good plea of *autrefois convict*? As to the view of my brother Andrews, I cannot agree with it because it applies as the intent with which the meeting assembled, that which is only alleged to have been the intent with which a particular act was done at the meeting. At best it is assent to something which was subsequent in point of time to the assembly the subject of the charge.

As to the argument that these acts are to be read, not as other and separate criminal acts, but as evidence that the defendants took part in the unlawful assembly, and that they are charged as overt acts of the unlawful assembly, I can only say that I have never heard of overt acts being pleaded in an indictment for an unlawful assembly. I have looked into what, probably, was the best considered indictment for an illegal assembly to be found in the books—I mean the indictment in the King *v.* Hunt, and in the fourth count (the only one upon which Hunt was convicted) it will be found that it charges an assembly with the particular intent, and nothing more. Why are we to say when the allegation is that "When you were so assembled you committed a distinct crime," that that allegation is a charge of intent to commit it. I am aware that it was argued at the bar (but I did not think it would have met with the concurrence of the Bench) that intent, in matters of this description, is either immaterial or may be presumed. I cannot agree. The materiality of intent is inextricably involved in every fibre of our criminal law. According to our law, the vast majority of crimes—certainly all our most serious crimes—are crimes by reason of intent. A number of acts, which are misdemeanours when a particular intent does not exist, become felonies when that intent does exist, and may become capital, or even treason, when there is a different intent. I never can be a party to treating as immaterial any element of intent—nor do I find it at all possible for me to read these summonses otherwise than as any ordinary lawyer would read them. "You the defendants, unlawfully assembled for a par- "ticular purpose," set out in apt language, "and when so assembled you then and there "did other acts," also duly set out, and which acts in themselves are criminal, and for which, therefore, you are liable to be punished; therefore you are called on to appear. I hold that the matter brought before the tribunal is all the criminal matter previously alleged, viz., first, the illegal assembly, and secondly, the acts done at it.

3 B. & Ald. 566.

I have no more to say as to the summonses. The difference between me and the other members of the Court is reduced to one merely of construction. I came down here prepared to show my reasons for holding that if a person is charged before a justice with criminal matter, over part of which he has jurisdiction, and over another part of which he has no jurisdiction, the matters are not separable during the course of the trial, and that the whole proceeding is void. It is however not necessary for me to occupy public time by a statement of these reasons, because none of my learned brethren have suggested that this elementary proposition is not law. All of them have rested their judgments upon the basis that all the matters charged in the summonses are within the jurisdiction of the justices.

I have now to say a word with reference to amendment. As I have said, whether there is to be an amendment or not, I do not know, but I am of opinion that there is no jurisdiction to amend. There is no case in the books authorising an amendment under circumstances of this description. According to my view of the Queen *v.* Burke, it does not approach this case; and if it be an authority for an amendment in this particular case, I, although one of the judges who decided it, unhesitatingly state that it was a wrong decision. In the Queen *v.* Burke, the charge was, "did unlawfully take part in an "unlawful assemb y." That charged a crime which the magistrate had jurisdiction to inquire into—but the charge was insufficient by reason of its not showing the intent, which made the meeting unlawful.—This was necessary to enable the Court to determine whether or not the intent was such as to make the assembly criminal. It, therefore, was a charge of criminal matter within the jurisdiction, insufficiently stated. The error therefore was within Section 39 of the Petty Sessions Act (*a*), and the amendment made was authorised by Section 76 of the Act of 1877 (*b*). To what extent is that decision now endeavoured to be pushed? Here is a case into which, in my opinion, the magistrates had no jurisdiction to enter, a case in which the entire of the proceeding was illegal, a proceeding at which they had no right to call upon the defendant for his defence, a proceeding at which they had no right to administer an oath, and then it is said that, under those circumstances, Section 76 is applicable. I can show by one word that that cannot be so. Notwithstanding these sections as to amendment, I suppose it will be admitted that, before a person can be convicted of a criminal offence, he is entitled to have the charge stated to him, in order that he may protect himself, and show whether he is guilty or not guilty. If, when the charge is stated to him, he objects to the jurisdiction, and if there is no jurisdiction in fact, he is entitled in law to say nothing; he is not bound to defend himself. But then, if in a proceeding so commenced he is convicted of an offence within the jurisdiction, *ex necessitate*, he is convicted of an offence which he had no opportunity of answering, because I assume that at the commencement of the trial, when he is put upon his trial, the offence with which he is charged is outside the jurisdiction, and after that has taken place, that is, when a trial has proceeded without jurisdiction, and has concluded without jurisdiction, if we in this court uphold that conviction by making an amendment, why, then we convict the accused of a crime with which he was not charged at the only time when he had an opportunity of showing that he was not guilty in fact. Therefore, it appears to me absurd to say that under either of these sections defects, which go to the jurisdiction to enquire, can be cured. Indeed, one of my learned brothers, Mr. Justice Johnson, agrees with me in this conclusion. My brother now reminds me that in the 39th section are contained the words, "*or other forms of procedure*," plainly showing that it does not deal with jurisdiction.

(Judgment of the Superior Courts, Ireland, p. 189).

(*a*) 14 & 15 Vic., c. 93.

(*b*) 40 & 41 Vic., c. 56.

I wish now to refer to a case as to the construction of Section 1 of Jervis's Act in England, similar to the 39th Section of 14 and 15 Vic., c. 93. It is Martin *v.* Pridgeon. The appellant was summoned before justices, under the Statute 10 and 11 Vic., c. 89, Section 29, on a charge of drunkenness and riotous behaviour. The justices held the riotous behaviour not proved, but convicted him of drunkenness, and fined him under the Statute 21, Jac. I., c. 7, s. 3. It was held that the conviction was bad, and that the defect was not one which could be cured under Section 1 of Jervis's Act, 11 and 12 Vic., c. 43. Crompton, *J.*, says: "Section 1 of Jervis's Act was framed to meet the case "of a variance between the summons and the evidence adduced in support of it but the "appellant has been summoned for an offence under one Act, and convicted of another and "a different offence, under another Act." Lord Campbell, *C.J.*, says: "He was convicted "under an Act which imposes for this offence a different punishment from that imposed "by the Act under which he was summoned. He was convicted of a distinct statutory "offence." Accordingly, the conviction was held to be bad.

E. & E. 778.

Without occupying further public time, as my view cannot be given effect to, I shall repeat, in a few words, my objections to the frame of the summons in the two cases. I hold (1) that the offence of illegal assembly is the mere presence at the assembly with the criminal intent, and excludes as part of the crime any act done by the defendant at the assembly, though no doubt such act may be evidence of the intent with which the person charged was there. (2.) I hold, as a corollary from that, that what is charged in these summonses is the crime of illegal assembly, (that is intentional presence at the assembly), and in addition certain criminal acts at that assembly, acts which consequently cannot be treated as part of the crime of illegal assembly, but each and every one of which was a distinct criminal offence, over which the magistrates had no jurisdiction. I am consequently of opinion that when the defendants were charged before the magistrates, they had a right to say, as they did say through their Counsel. "You "have no power to try us." I hold that from that moment the proceeding was illegal and that there was no jurisdiction to administer the oath.

One of my brethren has said, that which is of course obvious, viz., that if by reason of the frame of the summonses any illegal evidence had been given the convictions should be quashed.

Let me now pause at this for a moment. Will anyone say that the question of admissibility of evidence does not depend upon the charge that is being heard? Can any judge rule at *Nisi Prius* whether a particular thing is evidence or not, without regard to the character of the case he is trying? Therefore, in relation to this matter of evidence, it is absolutely essential that the charge should be known and should be one that there is jurisdiction to try. I admit that evidence of anything that took place at the meeting would have been admissible under the summons, if it had been properly framed, and, therefore, that in this particular case this error did not affect the evidence; but I hold that, speaking generally, the introduction of a charge in excess of jurisdiction involves a wrong criterion as to the admissibility of evidence, and that it is no answer to that to say, that illegal evidence was not in event admitted. I hold that the magistrates had no power to administer the oath to a witness to answer such questions as he should be asked touching a crime which the magistrates had no power to investigate. Finally, I hold that in this proceeding, illegal in its inception, illegal throughout, there was nothing which the law can recognise as a proceeding in which any conviction could be pronounced. What is called the proceeding is a void, illegal, thing, which the law will not recognise as an existing thing, as a proceeding in which any conviction could be lawfully made.

As to the fourth matter—that is, the conviction against O'Donnell and others—I hold, for the reasons I have already stated, that this is a conviction, not for unlawful assembly, but for criminal acts over which the justices had no jurisdiction.

For all these reasons, I am clearly of opinion that these convictions are illegal and void, and ought to be quashed; but having regard to the judgments of my brethren my opinion can have no effect, and the Order will be as will be suggested by them.

I certify the above to be a correct report of the judgments of the King's Bench Division in these cases.

JOHN G. THOMPSON, *Barrister,*

Reporting in the King's Bench Division for the Incorporated Council for Law Reporting in Ireland.

12*th February*, 1902.

OWENS AND OTHERS, - - - - - - *Appellants,*

TYACKE, - - - - - - - - *Respondent.*

O'DONNELL AND OTHERS, - - - - - - *Appellants,*

MOLONEY, - - - - - - - - *Resondent.*

KENNY, *J.*

5th February, 1902.

Mr. Justice Andrews and Mr. Justice Johnson have conferred with me, and we have unanimously agreed that the Orders shall be drawn up in the form in which Mr Justice Andrews has already indicated, and we consider that no amendment is necessary

Certified correct,

JOHN G. THOMPSON.

G

SUMMONS.

PETTY SESSIONS (IRELAND) ACT, 1851, 14 & 15 VIC, CAP. 93 CRIMINAL LAW AND PROCEDURE (IRELAND) ACT, 1887, 50 & 51 VIC., CAP. 20.

PETTY SESSIONS DISTRIOT OF BALLINLOUGH—COUNTY OF ROSCOMMON.

The KING at the prosecution of
H. D. TYACKE, D.I., R.I.C., Castlerea, *Complainant;*

MARTIN OWENS, Ballykillen, County Mayo; MICHAEL HIGGINS, Meeltraun O'Flynn, County Roscommon; MICHAEL DELANEY, Ballyhaunis, County Mayo; WILLIAM J. CUNNANE, Siscat, County Mayo; PETER ROGAN, Ballinrobe, County Mayo; THOMAS BRETT, Claremorris, County Mayo, JOHN P. HAYDEN, Mullingar, County Westmeath, *Defendants.*

WHEREAS a complaint has been made to me that you, the defendants, on Sunday the 17th day of November, 1901, at Cloonfad in the county aforesaid, took part in an unlawful assembly, to wit, that you the said defendants together with other persons to the number of five and more whose names are unknown, unlawfully and tumultuously did assemble together to the disturbance of the public peace, and while so assembled did cause terror and alarm to His Majesty's quiet and peaceable subjects and particularly to John Fahy and while so unlawfully assembled you did use and utter words intended and calculated to intimidate the said John Fahy and intended and calculated to urge and incite divers persons to use and exercise intimidation to and towards the said John Fahy on account of his having done what he had a legal right to do, namely to hold and occupy or use certain lands at Berinagh in said county and also while so unlawfully assembled, you did use and utter words intended and calculated to incite divers persons occupying lands as tenants for which lands they were legally liable to pay certain rents to enter into a criminal conspiracy not to discharge their legal obligations and not to pay the rents legally payable by them in respect of such their tenancies and thereby to injure the persons who were or might be entitled to receive such rents

This is to command you to appear as defendants on the hearing of said complaint, at Ballinlough in said county on the 20th day of December, 1901, at 12 o'clock, noon before such Justices as shall be there in pursuance of said Act.

Signed,

A. G. W. HARREL, R.M.,

Justice of said County.

This 11th day of December, 1901.

To

Martin Owens, Ballykillen, County Mayo.
Michael Higgins, Meeltraun O'Flynn, County Roscommon.
Michael Delaney, Ballyhaunis, County Mayo.
William J. Cunnane, Siscat, County Mayo.
Peter Regan, Ballinrohe, County Mayo.
Thomas Brett, Claremorris, County Mayo.
John P. Hayden, Mullingar, Connty Westmeath.

SUMMONS.

PETTY SESSIONS (IRELAND) ACT, 1851, 14 & 15 VIC., CAP. 93, CRIMINAL LAW AND PROCEDURE (IRELAND) ACT, 1887, 50 & 51 VIC., CAP. 20.

PETTY SESSIONS DISTRICT OF MULLAGHROE—COUNTY OF SLIGO.

The KING at the prosecution of
HARRY B. MOLONY, District Inspector, R.I.C.,
Complainant;

v.

JASPER TULLY, Esq., M.P., of Boyle, Co. Roscommon; JOHN O'DONNELL, Esq., M.P., of O'Connell-street, City of Dublin; DENIS JOHNSTON, of Ballaghadereen, Co. Roscommon; PATRICK M'MANAMY, County Councillor, of Tourane, Co. Sligo; JOHN GILMARTIN, D.C., of Ballymote, Co. Sligo,
Defendants.

WHEREAS a complaint has been made to me that you the defendants on Sunday the first day of December, 1901, at Gurteen in the county aforesaid took part in an unlawful assembly to wit that you the said defendants together with other persons to the number of five and more whose names are unknown, unlawfully and tumultuously did assemble together to the disturbance of the public peace, and while so assembled did cause terror and alarm to His Majesty's quiet and peaceable subjects, and while so assembled did speak and utter words intended and calculated unlawfully to incite divers persons who hold land as tenants under Lord De Freyne and who as such tenants were liable to pay certain rents to the said Lord De Freyne not to discharge their legal obligations and not to pay the respective rents for which they were so liable and words intended and calculated to incite said persons to enter into and engage in a criminal conspiracy not to discharge their said legal obligations, and not to pay their said respective rents and further to incite divers persons who being tenants holding land as tenants under the said Lord De Freyne and liable as such tenants to pay certain rents who had theretofore entered into an illegal combination not to discharge their legal obligations and not to pay such their respective rents to continue and persist in such illegal combination and in promoting and carrying out the same with the purpose of injuring the said Lord De Freyne.

This is to command you to appear as Defendants on the hearing of said complaint at the Petty Sessions to be held at Mullaghroe in the County of Sligo on the 19th day of December, 1901, at 11 o'clock, a.m., before such Justices as shall be there in pursuance of said Act.

(Signed) WM. JONES, R.M.,
Justice of said County.

This 11th day of December, 1901.

To the said Defendants and each of them.

Served Jasper Tully, Denis Johnston, and Patrick M. Molony, personally, with true Copies of this Summons on 12 : 12 : 01.

Served John Gilmartin, personally, with a true copy of this Summons on 13 : 12 : 01.

Served John O'Donnell, personally, with a true copy of this Summons on 14 : 12 : 01

THOMAS DURKON, Constable.

COPY CONVICTION.

PETTY SESSIONS (IRELAND) ACT, 1851, 14 & 15 VICT., CAP 93.

FORM 1A.—CERTIFICATE OF ORDER

PETTY SESSIONS DISTRICT OF BALLINLOUGH—COUNTY OF ROSCOMMON.

The KING at the prosecution of H. D. TYACKE, Esq., D.I., R.I.C., Castlerea, *Complainant*;

v.

MARTIN OWENS, MICHAEL HIGGINS, MICHAEL DELANEY, WILLIAM CUNNANE, PETER REGAN, THOMAS BRETT, and JOHN P. HAYDEN, *Defendants.*

I certify, that upon hearing of a complaint that on Sunday the 17th day of November, 1901, at Cloonfad Co. Roscommon they did unlawfully take part in an unlawful assembly, to wit that the said Defendants together with other persons to the number of five and more whose names are unknown unlawfully did assemble together to the disturbance of the public peace and with intent to intimidate one John Fahy and with intent to prevent certain other tenants hereinafter mentioned from fulfilling their legal obligations, and while so assembled did cause terror and alarm to His Majesty's quiet and peaceable subjects and particularly to John Fahy, and also while so unlawfully assembled they did use and utter words intended and calculated to intimidate the said John Fahy, and intended and calculated to urge and incite divers persons to use and exercise intimidation to and towards the said John Fahy on account of his having done what he had a legal right to do namely to hold and occupy and use certain lands at Berinagh, Co. Roscommon, and also while so unlawfully assembled they did use and utter words intended and calculated to incite divers persons occupying lands as tenants for which lands they were legally liable to pay certain rents, to enter into a criminal conspiracy not to discharge their legal obligations and not to pay the rents legally payable by them in respect of such their tenancies and thereby to injure the persons who were or might be entitled to receive such rents an Order was made on the 21st day of December, 1901, by Justices present against Defendants to the following effect, viz.:—

We find each and every one of the Defendants guilty of having taken part in an unlawful assembly at Cloonfad in the Co. Roscommon on the 17th November, 1901, to wit, that the said Defendants together with other persons to the number of five or more whose names are unknown unlawfully did assemble together to the disturbance of the public peace and with intent to intimidate one John Fahy. With reference to the other matters alleged in the summons we hold that they are separate charges with reference to which we have no jurisdiction and we agree to state a case as to whether their inclusion in the summons ousts our jurisdiction on the whole complaint, and we order that Martin Owens be confined in Castlebar Gaol for fourteen days, that Michael Higgins be confined in Castlebar Gaol for twenty-one days, that Michael Delaney be confined in Castlebar Gaol for one month, that William Cunnane be confined in Castlebar Gaol for one month, that Peter Regan be confined in Castlebar Gaol for one month, that Thomas Brett be confined in Castlebar Gaol for fourteen days, and that John P. Hayden be confined in Castlebar Gaol for twenty-one days. All sentences to be without hard labour.

(Signed)

A. G. W. HARREL, R.M.,

Justice of said County.

This 30th day of December, 1901.

COPY CONVICTION.

50 & 51 Vic., c. 20.

PETTY SESSIONS (IRELAND) ACT, 1851, 14 & 15 VIC. CAP. 93.

FORM Ia.—CERTIFICATE OF ORDER.

PETTY SESSIONS DISTRICT OF MULLAGHROE—COUNTY OF SLIGO.

The KING at the Prosecution of
HARRY B. MOLONY, D.I., R.I.C., - - *Complainant*,
v.
JASPER TULLY, Esq., M.P., JOHN O'DONNELL, Esq., M.P., DENIS JOHNSTON, PATRICK M'MANAMY, C.C., and JOHN GILMARTIN, D.C., - - - - - *Defendants*.

I CERTIFY, that upon hearing of a Complaint that the Defendants on Sunday the 1st day of December, 1901, at Gurteen in the County aforesaid took part in an unlawful assembly, to wit, that the said Defendants together with other persons to the number of five and more, whose names are unknown unlawfully and tumultuously did assemble together to the disturbance of the public peace and while so assembled did cause terror and alarm to His Majesty's quiet and peaceable subjects and while so assembled did speak and utter words intended and calculated unlawfully to incite divers persons who hold land as tenants under Lord De Freyne, and who as such tenants were liable to pay certain rents to the said Lord De Freyne, not to discharge their legal obligations, and not to pay the respective rents for which they were so liable, and words intended and calculated to incite said persons to enter into and engage in a criminal conspiracy not to discharge their said legal obligations, and not to pay their said respective rents, and further to incite divers persons, who being tenants holding land as tenants under the said Lord De Freyne, and liable as such tenants to pay certain rents, who had theretofore entered into an illegal combination not to discharge their legal obligations, and not to pay such their respective rents, to continue and persist in such illegal combination, and in promoting and carrying out the same with the purpose of injuring the said Lord De Freyne.

An Order was made on the 24th day of December, 1901, by the Court of Summary Jurisdiction constituted and acting under said Act against Jasper Tully, Esq., M.P., John O'Donnell, Esq., M.P., Denis Johnston, and Patrick M'Manamy, to the following effect, viz.:—

"We do hereby convict the defendants, Jasper Tully, M.P., John O'Donnell, M.P., "Denis Johnston and Patrick M'Manamy, for that they on Sunday, 1st day of "December, 1901, at Gurteen, in the County of Sligo, took part in an unlawful "assembly, to wit, that the said Jasper Tully, M.P., John O'Donnell, M.P., Denis "Johnston, and Patrick M'Manamy, together with other persons to the number of five "and more whose names are unknown assembled together and while so assembled "did speak and utter words intended and calculated unlawfully to incite divers "persons who hold land as tenants under Lord De Freyne, and who as such tenants "were liable to pay certain rents to the said Lord De Freyne not to discharge their "legal obligations and not to pay the respective rents for which they were so liable "and words intended and calculated to incite said persons to enter into and engage "in a criminal conspiracy not to discharge their said legal obligations and not to pay "their said respective rents and further to incite divers persons who being tenants "holding land as tenants under the said Lord De Freyne and liable as such tenants "to pay certain rents who had theretofore entered into an illegal combination not to "discharge their legal obligations and not to pay such their respective rents to con- "tinue and persist in such illegal combination and in promoting and carrying out "the same with the purpose of injuring the said Lord De Freyne. And do hereby "order that said Jasper Tully be for his said offence imprisoned in H.M. Prison at "Sligo for one calendar month and one day, without hard labour. That said John "O'Donnell be imprisoned in H.M. Prison at Sligo for two calendar months without "hard labour, that said Denis Johnston be imprisoned in Sligo Jail for three calendar "months without hard labour, that said Patrick M'Manamy be imprisoned in Sligo "Jail for one calendar month without hard labour. We do hereby dismiss without "prejudice the offence charged against the defendant John Gilmartin."

(Signed),
F. B. HENN, R.M.,
WM. JONES, R.M.,
} Justices of said County.

This 26th day of December, 1901.

H

IN THE HIGH COURT OF JUSTICE IN IRELAND,

KING'S BENCH DIVISION—CROWN SIDE.

Monday, the 3rd day of February, 1902

THE RIGHT HON. THE LORD CHIEF BARON; THE RIGHT HON. MR. JUSTICE ANDREWS; THE RIGHT HON. MR. JUSTICE JOHNSON; THE HON. MR. JUSTICE KENNY.

MARTIN OWENS, MICHAEL HIGGINS, MICHAEL DELANY, WILLIAM CUNNANE, PETER REGAN, THOMAS BRETT, AND JOHN P. HAYDEN, M.P., - - - - - - - *Appellants,*

H D. TYACKE, - - - - - - - *Respondent.*

AND

The Act 20 & 21 Vic., cap. 43.

In the Matter of a Complaint wherein the KING at the prosecution of H. D. TYACKE, Esq., D.I., R I.C., was - - - - *Complainant,*

AND

MESSRS. MARTIN OWENS, MICHAEL HIGGINS, MICHAEL DELANY, WILLIAM CUNNANE, PETER REGAN, THOMAS BRETT, AND JOHN P. HAYDEN, M.P., were - - - - - - *Defendants.*

Being in Crown Paper for Judgment. Standing from 21st and 23rd January, 1902. Magistrates' case dated 1st January, 1902, stated by A. G. W. Harrel, R.M., and Robert L. Brown, R.M., Justices of the Peace acting in and for the County of Roscommon from a Petty Sessions holden in and for the Petty Sessions District of Ballinlough in said County on the 20th and 21st Decemher, 1901.

Setting forth the facts and the grounds of their determination upon the hearing of the said complaint in said case set forth and finding each and every one of the Defendants guilty as in said case also set forth.

Tuesday, 21st January.—The MacDermot, K.C. (with whom were Mr O'Shaughnessy, K.C., and Mr J. Muldoon), heard of Counsel for Appellants.

Thursday, 23rd January.—The MacDermot, K.C., heard in continuation from 21st. The Solicitor-General, Mr. Camphell, K.C. (with whom were Mr. Fetherstonhaugh, K.C., and Mr. E. Morphy), heard of Counsel for the Respondent. Mr. Fetherstonhaugh, K.C., heard on same side, and Mr. O'Shaughnessy, K.C., heard in reply.

Whereupon—

Monday 3rd February.—On reading the case stated, the Court having heard and determined the question or questions of law arising thereon and being of opinion that, upon the true construction of the summons, it contains one charge only, namely, of taking part in an unlawful assembly which was within the jurisdiction of the Justices, their determination in convicting the defendants of having taken part in the unlawful assembly so charged was, on the case as stated, correct in point of law.

And the convictions ought therefore to he and are herehy affirmed.

JOHN FOX GOODMAN,
Master of the Crown Office.

IN THE HIGH COURT OF JUSTICE IN IRELAND,

KING'S BENCH DIVISION—CROWN SIDE.

Monday, the 3rd day of February, 1902.

THE RIGHT HON. THE LORD CHIEF BARON; THE RIGHT HON. MR. JUSTICE ANDREWS; THE RIGHT HON. MR. JUSTICE JOHNSON; THE HON. MR. JUSTICE KENNY.

JOHN O'DONNELL, M.P., DENIS JOHNSTON, AND PATRICK M'MANAMY, *Appellants*,

HARRY B. MOLONY, - - - - - - - - *Respondent.*

AND

The Act 20 & 21 Vic., cap. 43.

In the Matter of a Complaint wherein the KING at the prosecution of HARRY B. MOLONY, Esq., D.I, R.I.C., was - - - *Complainant*,

AND

JASPER TULLY, M.P., JOHN O'DONNELL, M.P., DENIS JOHNSTON, PATRICK M'MANAMY, AND JOHN GILMARTIN were - - *Defendants.*

Being in the Crown Paper for Judgment. Standing from 28th, 29th, and 30th of January, 1902.

Magistrates' case dated the 20th of January, 1902, stated at the instance of the Appellants by F. B. Henn, R.M., and William Jones, R.M., Justices of the Peace acting in and for the County of Sligo at a Petty Sessions holden in and for the Petty Sessions District of Mullaghroe on the 19th of December, 1901, and adjourned to Ballymote for further hearing on the 23rd and 24th December, 1901.

Setting forth the facts and the grounds of their determination upon the hearing of the said complaint as in the said case set forth and stating their conviction of the defendants Jasper Tully, M.P., John O'Donnell, M.P., Denis Johnston, and Patrick M'Manamy as in the said case also set forth and their dismissal without prejudice of the said complaint as against the defendant John Gilmartin.

Tuesday, 28th January.—The MacDermot, K.C. (with whom were Mr. O'Shaughnessy, K.C., and Mr. J. Muldoon), heard of Counsel for Appellants.

Mr. E. Morphy (with whom were the Solicitor-General, Mr. Campbell, K.C., and Mr. Fetherstonhaugh, K.C.), heard of Counsel for the Respondent. The Solicitor-General heard on same side

Wednesday, 29th January.—The Solicitor-General heard in continuation from yesterday. Mr. O'Shaughnessy, K.C., heard in reply.

Thursday, 30th January.—Mr. O'Shaughnessy, K.C., heard in continuation from yesterday, and the Solicitor-General further heard in reply to certain matters advanced by Mr. O'Shaughnessy.

Whereupon—

Monday, 3rd February.—On reading the case stated, the Court having heard and determined the questions of law arising thereon and being of opinion that, upon their true construction, the summons contains one charge only namely, of taking part in an unlawful assembly and the conviction is a conviction of that charge only, which was within the jurisdiction of the justices to hear and determine and that their determination in convicting the defendants John O'Donnell, Denis Johnston and Patrick M'Manamy of that charge was, upon the case as stated and the evidence contained in the depositions, correct in point of law doth order that the convictions of these three defendants ought to be and are hereby affirmed.

JOHN FOX GOODMAN,

Master of the Crown Office.

HIGH COURT OF JUSTICE IN IRELAND
(KING'S BENCH DIVISION).

COPY of the Judgments of the Judges of the High Court of Justice in Ireland (King's Bench Division) in the Cases Stated: Owens and Others, Appellants, Tyacke, Respondent, and O'Donnell and Others, Appellants, Molony, Respondent, decided 3rd February, 1902; with copies of the Summonses and Convictions, and of the Orders of the King's Bench Division.

(*Mr. George Wyndham*).

Ordered, by The House of Commons, *to be Printed,*
14th February, 1902

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